Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

NANCY BURTON,

Petitioner,

—v.—

HONORABLE A. WILLIAM MOTTOLESE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Did the Connecticut Supreme Court violate the Petitioner's right to procedural due process when it affirmed her disbarment in the absence of a written complaint and other procedural protections required by the state court rules for attorney discipline?

2. Did the Connecticut Supreme Court violate the Petitioner's right to substantive due process when it affirmed disbarment following proceedings which were fundamentally unfair?

PARTIES TO THE PROCEEDINGS

Petitioner: Nancy Burton

Respondent: Hon. A William Mottolese

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINION BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	17
CONCLUSION	30
APPENDIX	1a

TABLE OF AUTHORITIES

Cases:

PAGE

Chambers v. NASCO, 501 U.S. 32, 111 S.Ct. 2132, 115 L.Ed.2d 27 (1991)..... 22

Chaves v. The M/V Medina Star, 47 F.3ed 153 (5th Cir. 1995)..... 22

Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990) 23

Crowe v. Smith, 151 F.3d 217 (5th Cir. 1998).... 28

Emslie v. State Bar of California, 520 P.2d 991 (1974)..... 17, 19

Ex parte Robinson, 86 U.S. (Wall.) 505, 22 L.Ed. 205 (1873)..... 30

Ex parte Wall, 107 U.S. 265 (1883) 32

French v. Waterbury, 72 Conn. 435, 4 A. 740 (1899) 21

Galindo v. State, 535 S.W.2d 923 (1976)..... 17, 19

In re Abrams, 521 F.2d 1094 (3rd Cir. 1975) 17, 20

In re Egri, SC 03-865 ..... 16, 29

In re Medrano, 956 F.2d 101 (5th Cir. 1992) 22

In re Ruffalo, 390 U.S. 54, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)..... 19

In re Sealed Appellant, 194 F.3d 666 (5th Cir. 1999)..... 22, 30

In re Thalheim, 853 F.2d 383 (5th Cir. 1988).... 17, 20

PAGE

Johnson v. Mississippi, 403 U.S. 212,..... 28

Matza v. Matza, 226 Conn. 166, 627 A.2d 414 (1993)..... 25

Sonick v. Ignal, Connecticut Grievance Complaint 97-0957..... 26

State v. Ontra, 178 Conn. 480, 423 A.2d 134 (1979)..... 18

Statewide Grievance Committee v. Shluger, 230 Conn. 668..... 29, 30

Swenson v. Dittner, 183 Conn. 289, 439 A.2d 34 (1981)..... 21

Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971)..... 21

Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 105 S. Ct. 2265, 85 L.Ed.2d 652 (1985).....21, 25, 30

Statutes:

Connecticut General Statutes §51-84(b)..... 19

Court Rules:

Connecticut Practice Book §2-44..... 19

Connecticut Practice Book §2-47 ....16, 17, 18, 20, 22

Miscellaneous:

American Bar Association Model Standards of Attorney Discipline 5.11(b)..... 30

PAGE

7A C.J.S. Attorney & Client §173 25

26 Harvard Environmental Law Review 417 (2002) 28

The Journal of the Legal Profession, "Due Process in Disciplinary Proceedings," Vol. 22:351 (1998) 19

Nancy Burton, Petitioner, by undersigned counsel, requests that this Court issue a writ of certiorari to the Supreme Court of the State of Connecticut.

OPINION BELOW

The opinion of the Supreme Court of the State of Connecticut is *Nancy Burton v. A. William Mottolese*, 267 Conn. 1, 835 A.2d 998 (December 16, 2003).

JURISDICTION

The Opinion of the Supreme Court of the State of Connecticut was filed on December 16, 2003.The Supreme Court denied Petitioner's Motion for Reconsideration *En Banc* on.

This Court has jurisdiction under 28 U.S.C. § 1257.

Subject matter jurisdiction for the Supreme Court of the State of Connecticut was invoked under Connecticut Practice Book § 72-1.

STATUTORY PROVISIONS INVOLVED

Connecticut General Statutes § 51-84(b) provides as follows:

Any such [superior] court may fine an attorney for transgressing its rules and orders an amount not exceeding one hundred dollars for any offense, and may suspend or displace an attorney for just cause."

Connecticut Practice Book § 2-44 provides as follows:

The superior court may, for just cause, suspend or disbar attorneys and may, for just cause, punish or restrain any person engaged in the unauthorized practice of law.

Connecticut Practice Book § 2-47 provides as follows:

Presentments and Unauthorized Practice of Law Petitions

a) Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the statewide grievance committee or a reviewing committee. Service of the complaint shall be as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing the complainant shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. Unless otherwise ordered by the court, such complaints shall be prosecuted by the statewide bar counsel, an assistant bar counsel or an attorney appointed pursuant to Section 2-48.

STATEMENT OF THE CASE

The Connecticut Supreme Court affirmed the disbarment of the Petitioner attorney by a trial court judge with a longstanding grudge in the absence of a written complaint and other protections required by court disciplinary rules. The Court's action was unprecedented: the Statewide Grievance Committee, keeper of the registry of Connecticut attorneys, has no record of a Connecticut attorney disbarred outside the court's disciplinary rules.

In this Petition, the Petitioner argues that, notwithstanding a court's inherent power to discipline attorneys,

procedural due process *at a minimum* mandates adherence to procedural rules established to protect the due process rights of attorneys subject to disbarment.

This Petition further argues that the Petitioner was otherwise deprived of procedural and substantive due process and that the discipline imposed was not warranted.

I. Factual Background of the Dispute

The Petitioner, an attorney licensed to practice law in the state of Connecticut and whose practice emphasizes land use and environmental law, was engaged by Joseph and Lenore A. Sullivan ("the Sullivans") in December 1999 to institute state court litigation on their behalf to challenge a pending subdivision development in their residential neighborhood in Monroe, Connecticut.

The developer in question had obtained a zoning variance to use a rock crusher onsite to process the boulders that would be created during blasting to develop the site for homes. The town's zoning regulations prohibit rock crushers in residential neighborhoods because of noise, dust and other nuisance factors. When the Sullivans engaged the Petitioner, the statutory time period to appeal the zoning variance was just days away.

The Sullivans were also concerned that subdivision, inland wetlands, excavation and blasting permits were being issued by the town in violation of state statutes and town regulations and without proper notice to nearby residents, including themselves. Without proper subdivision, wetlands, excavation and blasting permits, there would be no need for the rock crusher because there would be no rocks to crush.

The Petitioner and the Sullivans entered into a written fee agreement with the understanding that Petitioner

would initially institute an appeal of the zoning variance. It was agreed that the Petitioner would then conduct further research of the facts and legal issues and, with the Sullivans' agreement, institute other legal actions as appropriate to challenge decisions by the town land-use agencies to issue subdivision, wetlands, excavation and blasting permits.

The Sullivans owned property adjoining the subdivision development and therefore had legal standing under Connecticut law to file court actions challenging the development.

However, the Sullivans believed their litigation would carry more weight if it were a neighborhood effort. Therefore, they recruited their neighbors to join them as co-plaintiffs in the litigation. The Sullivans put flyers in their neighbors' mailboxes alerting them to the subdivision plans and invited them to attend a meeting on December 22, 1999 to discuss possible litigation. The Sullivans asked the Petitioner to make a presentation to the neighbors about their planned litigation and legal strategies at the December 22 meeting on the eve of the variance appeal deadline. The Petitioner agreed to represent additional plaintiffs in the litigation at no additional cost to the Sullivans and at no charge to the additional plaintiffs.

At the meeting of interested neighbors, the Sullivans introduced the Petitioner as the attorney they had hired to bring a legal action challenging the zoning variance and to institute further actions as appropriate.

Many of the neighbors expressed concerns that the developer had obtained permits in violation of town regulations, that town land-use agencies had not provided proper notice to them, and that town land-use enforcement was lax. Many also expressed concerns about the

effects of the blasting necessary to break up the ledge and bedrock outcroppings that characterized the site. Several of the neighbors' properties adjoin a pond which would be a receiving basin for post-development runoff. Two neighbors, Richard and Patricia Hunter, volunteered to pay an engineer to review the plans and make recommendations for use in the litigation.

During the hourlong presentation, the Sullivans invited the neighbors to participate as co-plaintiffs in the prospective litigation to be instituted by the Petitioner. The Sullivans explained that they were assuming all costs of the litigation, that voluntary financial contributions were welcome but not required, and that their neighbors' participation in the court proceedings would not be necessary except to establish standing, although their attendance at court hearings was encouraged.

At the meeting, the Petitioner explained what a "plaintiff" was and what would be required of those who decided to participate as plaintiffs. She explained that the Sullivans had engaged her to institute the rock crusher appeal immediately and to institute such further legal actions as appeared appropriate upon further investigation. She explained that if the plaintiffs succeeded in obtaining a temporary injunction regarding the subdivision and inland wetlands approvals, and if site work were thereby temporarily halted, the rock crusher variance would become moot because the variance was issued for a limited period of time only.

In answer to a question from the audience as to whether as plaintiffs the neighbors could be sued by the developer, the Petitioner stated that all litigation carried such risks but that the risk should be remote because the Petitioner would exercise care and caution in the litigation. The Sullivans explained that they would be the principal active plaintiffs and that they would take on

the task of copying and distributing legal documents generated in the litigation to all co-plaintiffs to minimize legal costs.

At the conclusion of the meeting, the Sullivans circulated forms they prepared for those neighbors to sign who were interested in participating as plaintiffs in the litigation which had been discussed. The forms referred specifically to the zoning variance appeal.

The forms were entitled "Signatures to Become Co-Plaintiffs." Twenty neighbors signed the forms at the conclusion of the meeting. The following day, the Petitioner instituted the zoning variance appeal on behalf of the Sullivans and their 20 neighbors who signed the form ("Sullivan I"). As had been discussed, the Petitioner provided the Sullivans with copies of all legal documents. The Sullivans made 20 copies of the summonses and complaints bearing all the plaintiffs' names and addresses and mailed them to their 20 co-plaintiffs. Although the Petitioner had a retainer agreement with the Sullivans, she did not prepare one for the 20 co-plaintiffs, believing that none was necessary because there was no fee involved. The Connecticut Rules of Practice require a written fee agreement in a contingency fee case but do not explicitly require a written fee agreement in *pro bono* cases. An attorney is however to provide new clients with a writing setting forth the scope of the work to be undertaken.

The Petitioner next confirmed that serious errors had occurred in approvals of subdivision, wetlands, excavation and blasting permits and that notices of the decisions were defective and did not comply with state law. As the Petitioner prepared a complaint addressed to such issues, the Sullivans sent a mailing to all 20 co-plaintiffs and confirmed with each by telephone that all wanted to participate in the second lawsuit as well. The Petitioner

filed and served the second suit, a declaratory judgment and injunction action, on behalf of the same 22 plaintiffs ("Sullivan II") on December 29, 1999.

As before, the Petitioner provided the Sullivans with copies of the second lawsuit documents and the Sullivans made 20 copies of the summonses and complaints bearing all the plaintiffs' names and addresses and mailed them to their 20 co-plaintiffs.

None of the 20 co-plaintiffs contacted the Petitioner to tell her they did not want to participate in either Sullivan I or Sullivan II after they received copies of the lawsuits with their names on them.

In the meantime, the Petitioner obtained a court date for a temporary injunction hearing in Sullivan II. (Proceedings in Sullivan I were stymied when the developer's attorney filed a motion to dismiss the zoning appeal for lack of standing, a clearly meritless motion since the Sullivans' ownership of adjacent property sufficed for jurisdictional purposes.)

Juvenile Court Judge A. William Mottolese was assigned to preside over the hearing. Judge Mottolese did not disclose that he harbored a bias against the Petitioner. That Judge Mottolese harbored a bias against the Petitioner from the outset of the case was revealed months later when he issued a decision scorning the Petitioner for her reputation as an attorney successful in "forestalling, curtailing and delaying certain land development projects in our state." Judge Mottolese's bias later surfaced in the disbarment proceedings he initiated when he falsely accused the Petitioner of having filed a judicial complaint against him years earlier. Judge Mottolese also denied that he had acted improperly in a case ten years before, when the record established that he had engaged in an impermissible *ex parte* communication

with an opposing counsel, a fact established by an independent grievance investigation.

A hearing on the temporary injunction application in Sullivan II was held before Judge Mottolese over several days in January 2000. Two of the plaintiffs, Lenore Sullivan and one of her neighbors, Patricia Hunter, testified. Representatives of the town and the developer also testified.

As was agreed, the Sullivans contacted their neighbors to update them on the litigation. Six months later, on June 30, 2000, after the development was substantially blasted and excavated, Judge Mottolese issued a decision denying the temporary injunction. He also dismissed two counts of the three-count complaint, finding that the town agencies' notices to the neighbors were legally sufficient notwithstanding that they incorrectly identified the location of the project and provided no notice whatever where notice was required by law.

The Petitioner telephoned the Sullivans to tell them about the decision. The Sullivans were very upset. They told the Petitioner to withdraw them as plaintiffs from Sullivan II but to continue to prosecute Sullivan I on their behalf. The Petitioner said withdrawing them from Sullivan II without a release from the developer would jeopardize Sullivan I and expose them to a possible retaliatory action by the developer.[1] Furthermore, the Petitioner stated that it was necessary to have a meeting with all 22 plaintiffs to discuss the status of the litiga-

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[1] In his subsequent "judicial inquiry," and prior to hearing the Petitioner's testimony or deciding the issue of her authority to represent the plaintiffs, Judge Mottolese gave directions to the remaining plaintiffs in Sullivan I and Sullivan II to file *pro bono* appearances and withdraw from both actions without first obtaining a release from the developer. The developer's attorney promptly threatened to bring a retaliatory suit against them.

tion and decide what to do next so that the rights of all plaintiffs would be protected. The Sullivans refused and became abusive.

In order to preserve all the plaintiffs' rights and remedies, the Petitioner filed a motion for reconsideration of Judge Mottolese's decision within the twenty-day period allowed by the state court rules of practice.

The Petitioner wrote a letter on July 22, 2000, addressed to all 22 plaintiffs informing them of Judge Mottolese's decision and enclosing a copy of the decision. The Petitioner asked each plaintiff to contact her to arrange for a status meeting. Not one plaintiff contacted her. No plaintiff asked to be withdrawn from the litigation.

The Petitioner sent a second letter on August 17, 2000, to all 22 plaintiffs informing them that it was necessary to meet to discuss what to do in the litigation. The Petitioner stated that if they did not contact her, she would have no choice but to withdraw her representation. Not one plaintiff contacted her. No plaintiff asked to be withdrawn from the litigation.

The Petitioner notified all 22 plaintiffs on August 29, 2000, that she was filing a motion to withdraw her appearance on their behalf because of the breakdown in communications. She advised them that they could engage other counsel or file *pro se* appearances. Still none of the plaintiffs contacted her.

In the meantime, the Sullivans addressed a letter to Judge Mottolese explaining that they did not want to pursue Sullivan II and that the Petitioner had failed to accede to their directions to withdraw them from the case.

In addition, one of the 22 plaintiffs, Catherine B. Finch, went to an attorney acquaintance on another mat-

ter after receiving the Petitioner's notice of withdrawal and brought up the subject of the Sullivan litigation.

In the Petitioner's absence,[2] on September 28, 2000, Judge Mottolese commenced a scheduled hearing on all attorneys' motions for sanctions. He made the following statement on the record based on information which had obviously been presented *ex parte* to him outside the record:

> I'm not sure I understand what you're getting at. Is it—is it what you're suggesting to the Court that Ms. Finch was made a plaintiff in this action without her authorization or consent or knowledge?

Ms. Finch's lawyer and the town's attorney then informed Judge Mottolese that Ms. Finch "knew nothing about" the Sullivan litigation, had "never met Attorney Burton" and had "[n]ever had any contact with Ms. Burton."

Based on the receipt of such false *ex parte* information and false statements by attorneys, Judge Mottolese initiated a "judicial inquiry" to determine the Petitioner's authority to represent the 22 plaintiffs in the litigation

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[2] The Petitioner was engaged in jury selection in an unrelated case in another court from which she was not excused. The Petitioner cited Article First ("Declaration of Rights"), Section 19 of the Connecticut Constitution which provides in part: "The right to question each juror individually by counsel shall be inviolate."). "The Petitioner filed motions for continuance and left messages for Judge Mottolese through his clerk as to her unavailability. Nevertheless, Judge Mottolese conducted the proceedings in her absence, and, without notice or hearing, he *sua sponte* fined her without notice $100, later increased to $1,000 to cover attorney's fees to the town and developer's attorneys for her unexcused absence. Judge Mottolese ordered the fine pursuant to Connecticut General Statutes § 51-84 which provides that a Superior Court judge may "fine an attorney for transgressing its rules and orders an amount not exceeding one hundred dollars for any offense."

and to examine why the Petitioner did not immediately withdraw the Sullivans from the Sullivan II litigation at their request without obtaining a release.

II. Trial Court Proceedings

Judge Mottolese initiated the "judicial inquiry" without a written complaint. Many of the 20 co-plaintiffs had withdrawn from the litigation after being summoned to the developer's attorney's office for depositions in the Petitioner's absence. The defendants' attorneys subpoenaed the remaining plaintiffs to testify.

Initially, Judge Mottolese *refused* to disclose to Ms. Burton the nature and scope of the proceedings. After having once directed Ms. Burton to restrict her questioning of the plaintiffs to the "scope of the inquiry," this colloquy occurred:

> THE COURT: [While denying Ms. Burton's request to present the plaintiff Cynthia Ambrosey with a copy of her motion to withdraw her appearance] No, you may not. This has nothing to do with the motion to withdraw appearance, that will come at a later date, Ms. Burton. You know what the scope of this inquiry is. Please confine your questions to that scope.
>
> MS. BURTON: I don't know what the scope of the inquiry is, Your Honor. I'm not even—I'm not sure why we're here going through this exercise.
>
> THE COURT: You're not sure why you're here?
>
> MS. BURTON: I'm not sure why we're here.
>
> THE COURT: Then you obviously don't wish to participate, sit down.
>
> MS. BURTON: I certainly wish to participate, Your Honor, but I don't think it's ever been identified—

> THE COURT: I'm about to excuse the witness, if you don't know why you are here, or why this witness is in this witness box then please sit down, and we will go on with the rest of the proceeding without you.

It was not until December 21, 2000, or nine days after he instituted the "special proceedings," that Judge Mottolese informed Ms. Burton of the nature of the proceedings, as follows:

> THE COURT: **So it is a judicial inquiry, is what it is, instituted by the Court on the Court's own motion.** [Emphasis added.]

The following colloquy occurred later that day:

> THE COURT: You still don't know what this proceeding is all about?
>
> MS. BURTON: Well, it's never been, that I'm aware of—
>
> THE COURT: Could I make it clearer to you, Ms. Burton? It is the Court's inquiry into your alleged unauthorized representation of numerous plaintiffs. Your alleged unauthorized continuation of activity in this lawsuit on behalf of those plaintiffs, including the Sullivans. And what sanctions should ensue from those, if—should the Court find—should the Court find that, in fact, you have engaged in this type of conduct. It's as simple as that.
>
> MS. BURTON: Your Honor, it has never been identified in that way. There is no motion to that effect.
>
> THE COURT: It is of the Court's—
>
> MS. BURTON: And, in fact—
>
> THE COURT:—motion. It's of the Court's motion—on the Court's motion.

The eight co-plaintiffs who appeared testified that they all voluntarily signed the "Signatures to Become Co-Plaintiffs" form. Three acknowledged that they were plaintiffs in the case. Judge Mottolese severely limited the scope of questions he permitted the Petitioner to ask. In his questioning of co-plaintiffs on December 12, 2000, Judge Mottolese influenced or attempted to influence the plaintiffs' responses by the leading nature of his questioning.[3] After prompting by Judge Mottolese, five said they believed they were signing a petition and, although they received much written material from the Petitioner and the Sullivans, they did not read it, or if they read it, they did not remember what they had read. No one testified that he contacted Ms. Burton directly to remove his name from the litigation prior to August 29, 2000 when she withdrew her appearance.

The Sullivans testified that all 22 plaintiffs authorized both Sullivan I and Sullivan II. The record establishes that five co-plaintiffs contributed money to support the

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[3] For example, Judge Mottolese referred to the forms entitled "Signatures to Become Co-Plaintiffs" as "petitions"; subsequently several of the plaintiffs testified that they believed they were signing "petitions," not forms to join legal actions as plaintiffs. As another example, Judge Mottolese asked plaintiff David Boston the following question: "And when you first learned that your name was included as a plaintiff in October [2000, at his deposition], did you do anything about it?" However, as the transcript shows, Mr. Boston did not testify about when he first learned that he was included as a plaintiff. What he did state was that at his deposition in October 2000 he "stated very clearly for the stenographer and the court record that **I no longer wanted to be a plaintiff in this case** and would like to be released without harm." (Emphasis added.) As another example, Judge Mottolese preceded his questioning of plaintiff Cynthia Ambrosy as follows: "Your name appears . . . attached to the summons and complaint, you probably have never—I don't know, have you seen it before."

litigation.[4] The record is absent any evidence that any of the Sullivans' co-plaintiffs contacted her to withdraw them from the litigation before she filed her withdrawal. The Petitioner testified that she believed she was fully authorized to represent all 22 plaintiffs in Sullivan I and Sullivan II.

Catherine B. Finch, whose attorney's false statement to Judge Mottolese on September 28, 2000, prompted the inquiry, testified contrary to her attorney's statement. Ms. Finch testified that she had been present at the December 22, 1999 meeting, she had voluntarily signed the "Signatures To Become Co-Plaintiffs" form, she had sent a check for $50 to Ms. Burton to support the litigation, and she understood she was a plaintiff. She stated she asked the Sullivans to direct Ms. Burton to withdraw her from the litigation in the spring of 2000. The Sullivans never informed the Petitioner of Ms. Finch's communication to them nor did Ms. Finch contact her directly.

Ten of the 20 co-plaintiffs never appeared before Judge Mottolese in this matter.

Judge Mottolese displayed prejudgment and bias against the Petitioner in the midst of his interrogation of the plaintiffs, and prior to hearing any testimony by the Sullivans or the Petitioner, when he uttered the follow-

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[4] The record includes the following letter from plaintiffs Irving and Edith Nelson:

"August 14, 2001

To Whom It May Concern:

I'am[sic] unable to attend court today because of the illness of my wife Edith. I want to support her because Nancy Burton has had our full authorization throughout the Sullivan lawsuits and found her to be honest. We also respect her dilligence [sic], hard work and honor.

Sincerely,

Irving & Edith Nelson"

ing remark in response to defendant's counsel's request to remove a named plaintiff from the case:

> THE COURT: **Well, just like everybody's name should be removed forthwith.** [Emphasis added.]

During Petitioner's direct testimony, Judge Mottolese threatened her with incarceration if she did not reveal attorney-client confidences with the then-sole remaining plaintiff, Irving Nelson.

On November 21, 2001, Judge Mottolese issued an order disbarring the Petitioner from the practice of law in Connecticut. The order includes findings that the Petitioner engaged in professional misconduct by misrepresenting to the court that she was authorized to represent any plaintiffs other than the Sullivans and the Hunters. The order also includes findings that the Petitioner engaged in misconduct when she did not immediately withdraw the Sullivans from Sullivan II upon their request but instead moved to withdraw her appearance based on a breakdown of communications. The order also concludes that the Petitioner engaged in "pervasive misconduct" out of "selfish" motives. The order identifies various mitigating and aggravating factors. Judge Mottolese stayed the order pending appeal. The Petitioner appealed by filing a writ of error in the Connecticut Supreme Court.

III. Connecticut Supreme Court Proceedings

Following oral argument on September 23, 2003 before the only seven-member *en banc* panel assembled for the fall term of the court, the Connecticut Supreme Court affirmed the order of disbarment on December 16, 2003. On January 7, 2004, the Connecticut Supreme Court denied the Petitioner's motion for reconsideration.[5]

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[5] Further proceedings remain pending before the Connecticut Supreme Court. On December 26, 2003, the Petitioner filed a motion

The 48-page Connecticut Supreme Court opinion does not mention the Connecticut rule of court—§ 2-47—which governs procedures for attorney disbarment in the state and with which Judge Mottolese dispensed.[6]

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for disclosure requesting that the justices disclose facts which would give rise to a claim of bias or conflict of interest. On January 7, 2004, the motion was denied. On February 22, 2004, the Connecticut Supreme Court granted the Petitioner's motion to stay the orders pending appeal to the U.S. Supreme Court. On March 12, 2004, the Connecticut Supreme Court vacated the stay *sua sponte*, with Justice Christine Vertefeuille for the first time recusing herself from the matter. On March 22, 2004, the Petitioner filed a motion for reconsideration *en banc* of the stay order. The motion disclosed that Justice Vertefeuille receives proceeds from a Northeast Utilities 401K plan and that Justice Vertefeuille had disqualified herself from all five appeals the Petitioner had brought to the Connecticut Supreme Court regarding the Millstone Nuclear Power Plant and in which Northeast Utilities was a defendant-appellee. The March 22, 2004 motion is pending before the Connecticut Supreme Court. On March 30, 2004, the Petitioner filed a motion to reopen the appeal in light of three developments which had occurred since the decision was issued: (1) Public disclosures that a nominee to a judicial post who had provided *pro bono* and paid legal work to Governor John G. Rowland for a period of nine years without a written retainer agreement enjoyed the endorsement of at least two justices of the Connecticut Supreme Court; (2) The Petitioner's institution of a declaratory judgment action seeking to vacate a $171,546.80 contempt sanction imposed by a U.S. district court judge on grounds of fraud and collusion involving state officials and corporate attorneys. This decision was the subject of the Petitioner's recent unsuccessful petition for writ of certiorari in *In re Egri*, 03-865 and was relied upon by the Connecticut Supreme Court to justify Petitoner's disbarment; and (3) the dismissal of one of the pending grievance proceedings referenced in footnote 51 of the disbarment opinion, *Burton v. Mottolese*, supra.

[6] The Petitioner argued in her brief and in argument before the Connecticut Supreme Court that the requirements of § 2-47 are procedural due process prerequisites which must be afforded an attorney subject to disbarment.

REASONS FOR GRANTING THE WRIT

1. In affirming the Petitioner's disbarment without the protections provided by § 2-47 of the Connecticut rules of court which govern attorney disbarment, the Connecticut Supreme Court deprived the Petitioner of her right to procedural due process. This holding is contrary to the holdings of many jurisdictions which have considered this question. *In re Abrams*, 521 F.2d 1094 (3rd Cir. 1975); *In re Thalheim*, 853 F.2d 383 (5th Cir. 1988); *Emslie v. State Bar of California*, 520 P.2d 991 (1974) (Supreme Court of California); *Galindo v. State*, 535 S.W.2d 923 (1976) (Court of Civil Appeals of Texas); *In re Hoover*, 745 P.2d 939 (1987) (Supreme Court of Arizona).

2. In affirming the Petitioner's disbarment by order of a biased trial judge who conducted fundamentally unfair proceedings and who prejudged the outcome, the Connecticut Supreme Court violated longstanding precepts of substantive due process.

DISCUSSION

While the courts have inherent power to discipline attorneys, they must comply with court rules they have adopted to provide procedural due process protections to attorneys who are subject to professional discipline.

The Connecticut court rules require that an attorney subject to disbarment must be provided with a written complaint, that the complaint be served by a state marshall and that a hearing be held within 60 days before a judicial authority other than the complainant.

In this case, the Connecticut Supreme Court affirmed the Petitioner's disbarment although the trial court—

which possessed manifest bias and initiated *sua sponte* a "judiciary inquiry," serving as judge, prosecutor, advocate, jury and sentencing judge—dispensed with each of these court rules and deprived the Petitioner of their protections.

The Connecticut Supreme Court's action was unprecedented. The Connecticut Statewide Grievance Committee, which keeps a registry of Connecticut attorneys, has no record of an attorney being disbarred other than pursuant to the court rules. In the only other case on record when a trial court ordered an attorney disbarred without a written complaint, the Connecticut Supreme Court reversed.[7]

This petition argues that the Connecticut Supreme Court violated the Petitioner's fundamental due process rights by dispensing with the protection of the court rules. This petition further argues that the Supreme Court in error affirmed draconian orders which derived from fundamentally unfair proceedings.

I. Connecticut Court Rules Govern Disbarment Procedures

Before an attorney may be disbarred in Connecticut, Connecticut Practice Book § 2-47 provides that the attorney must be provided with a written complaint served by a state marshal. A hearing before a judicial authority must be held within 60 days. Section 2-47 was adopted by the Superior Court judges as revised in 1986.

In this case, Judge Mottolese dispensed with the § 2-47 requirements. He initiated a "judicial inquiry" in the absence of a written complaint pursuant to the court's asserted inherent power to discipline attorneys.

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[7] See *State v. Ontra*, 178 Conn. 480, 423 A.2d 134 (1979).

The court's inherent power to disbar is recognized in Connecticut General Statutes § 51-84(b) and Connecticut Practice Book § 2-44.

However, § 2-47 provides the mandatory procedures which must be followed to satisfy due process before the superior court can order an attorney disbarred.

Because an attorney's right to practice her chosen profession is a fundamental liberty interest, and because the proceedings are adversarial and quasi-criminal, an attorney subject to professional discipline is entitled to the protections of due process. *In re Ruffalo*, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968).

Where state bar disciplinary rules have been adopted for regulation of disciplinary proceedings, they must be followed in part to protect attorneys from "unwarranted prosecution, harassment or other abuses of power." *Galindo v. State*, 535 S.W.2d 923, 926 (1976). "Legislative standards for conduct of disciplinary proceedings are but **minimum** standards which must be applied; the supreme court retains the inherent power to require **additional** standards if it is not satisfied that legislative qualifications are sufficient." *Emslie v. State Bar of California*, 520 P.2d 991, 999 (1974). (Emphasis added.)

Thus, in addition to the traditional due process components, a "state may choose to adopt any of a number of procedures to which an attorney has a right in a disciplinary matter, and which constitute procedural due process violations if not carried out satisfactorily. *The Journal of the Legal Profession*, "Due Process in Disciplinary Proceedings," Vol. 22:351 (1998).

Thus, while the courts have undoubted inherent power to discipline attorneys, as a matter of fundamental procedural due process, attorneys in Connecticut are entitled *at a minimum* to the protection of court rules which govern attorney discipline, that is, § 2-47.

A "district court's inherent power to discipline attorneys who practice before it does not absolve the court from the obligation to follow its own rules which it has created in order to implement its exercise of such power." *In re Thalheim*, 853 F.2d 383, 388 (5th Cir. 1988).

Thus, due process was found lacking by the Fifth Circuit where disciplinary proceedings were instituted by a district court in violation of a court rule requiring an investigatory panel recommendation before such proceedings commence. Id. at 387-88.

In *In re Abrams*, 521 F.2d 1094 (3rd Cir. 1975), the Third Circuit reversed a disbarment by the district court where the district court failed to follow its own local rules in disbarring the appellant. Similarly, in *In re Hoover*, 745 P.2d 939 (1987), the Arizona Supreme Court reversed a disciplinary order on a finding that the attorney was deprived of due process when the disciplinary proceedings did not comply with court rules governing disciplining of attorneys.

As the Fifth Circuit opined in *Thalheim*,

"When a court undertakes to sanction an attorney for violating court rules, it is incumbent upon the sanctioning court to observe scrupulously its own rules of disciplinary procedure. If the rules are inadequate, the court can proceed to amend them. But unless and until such amendment occurs, attorneys have the right to rely upon the rules. A court cannot ignore and circumvent its rules at will to the detriment of those covered by them." Id. at 390.

" 'Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him,' due process guarantees must be scrupulously observed." *Zauderer v. Office of Disciplinary*

Counsel, 471 U.S. 626, 670, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) (Brennan, J., dissenting), citing *Wisconsin v. Constantineau*, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971).

Here, the record shows the disbarring authority, Judge Mottolese, not only did not provide the Petitioner with a written complaint: he *withheld* from her the serious nature of the hearing and the potential severe consequences being contemplated. Here, the disbarring authority prejudged its own complaint–initiated on false statements by opposing attorneys–before the petitioner had an opportunity to present her side. Here, the disbarring authority deprived the Petitioner of a fair hearing when it intimidated the witnesses through leading questions, pressured them to drop the lawsuit and acted as complainant, judge, prosecutor, advocate, jury and sentencing judge. "The action of a judge taking an apparent position of advocacy in a case before him has been continually condemned." *Swenson v. Dittner*, 183 Conn. 289, 297, 439 A.2d 334 (1981). Once a judge becomes an advocate in a case, grounds for disqualification as a judge exist because of the common-law maxim that "no judge shall be judge in his own cause." *French v. Waterbury*, 72 Conn. 435, 438, 44 A. 740 (1899).

Here, the disbarring authority possessed animus against the Petitioner which surfaced repeatedly in the proceedings.

The result in this case would have been different had the § 2-47 requirements been followed: the contrived complaint would have been dismissed with prejudice.

II. The Proceedings Were Fundamentally Unfair.

The Connecticut Supreme Court affirmed disbarment where the proceedings were fundamentally unfair and thereby violated the Petitioner's substantive due process rights.

A. The Inherent Power to Discipline Attorneys Must Be Exercised With Restraint and It Requires Clear and Convincing Evidence of Attorney Bad Faith

"Because of their very potency, inherent powers must be exercised with restraint and discretion." *Chambers v. NASCO, Inc.* 501 U.S. 32, 44, 111 S.Ct. 2132, 115 L.Ed.2d 27 (1991). In exercising its inherent powers, a court must still comply with due process. Id. at 50.

When acting under an inherent power to disbar an attorney, a district court must make a specific finding that an attorney's conduct "constituted or was tantamount to bad faith." *In re: Sealed Appellant*, 194 F.3d 666, 671 (5th Cir. 1999), citing *Roadway Express, Inc. v. Piper*, 47 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). *Chaves v. The M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995)(reversing an order of sanctions against attorney because he acted in good faith); *Resolution Trust Corp. v. Bright*, 6 F.3d 101, 103-05 (5th Cir. 1992) (reversing attorney disbarment because the record did not support the district court's bad faith finding); *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992) (reversing attorney disbarment because the district court applied the preponderance of the evidence rather than clear and convincing evidence standard). Where the finding of bad faith is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence, the imposition of sanctions is necessarily [an] abuse of discretion. *Cooter & Gell v. Hartmarx Corp.*,

496 U.S. 384, 403, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990).

The gravamen of the alleged misconduct ascribed to the Petitioner was the trial court's finding that the petitioner was not authorized to represent the 20 *pro bono* plaintiffs in the litigation.

However, the record contains the following indicia of conduct which led the Petitioner reasonably to believe in good faith that she was authorized to represent the 20 co-plaintiffs:

- All responded to a flyer announcing an informational meeting to discuss litigation by attending the meeting on December 22, 1999;
- All were fully informed about the nature and goals of the prospective litigation and that the Sullivans were assuming all costs of the litigation.
- From the questions that were raised by the audience and the responses given, she believed that there was a good understanding of the nature and scope of the litigation.
- All voluntarily signed their names and provided their addresses on the "Signatures to Become Co-Plaintiffs" form in the Petitioner's presence;
- All received mailed copies of the two lawsuits containing their names and addresses as plaintiffs;
- All received the three sets of flyers from the Sullivans explaining the status of the litigation;
- All received Petitioner's July and August 2000 letters concerning the status of the litigation;
- None of the 20 co-plaintiffs contacted the Petitioner between the time she instituted the litigation in December 1999 and August 29, 2000, the

date she notified them of her motion to withdraw as their attorney, to question why she included their names as co-plaintiffs nor did any direct her to withdrawn them from the litigation.

- She had personal contacts with plaintiffs Patricia Hunter and Jule Toma, who volunteered technical information about blasting.
- She received monetary contributions from Catherine Finch, a co-plaintiff, of $50, and Irving and Edith Nelson, co-plaintiffs, of $25.

The trial court concluded that the petitioner was not authorized to represent any of the 20 co-plaintiffs other than the Hunters, reasoning that Patricia Hunter's testimony as a plaintiff at the injunction hearing suggested that she had authorized the suit.

The trial court's conclusion rejected the testimony of the Petitioner and the Sullivans and relied upon the testimony of intimidated witnesses who said they did not read what they signed and did not read their incoming mail or did not remember anything.

It has been held that a party may lose his right to question the appearance for him of an attorney by failure to dissent and to raise objection with due diligence. 7A C.J.S. Attorney & Client § 173.

The court's exercise of its inherent power to disbar the Petitioner on the basis of suspect testimony by several individuals who kept silent for eight months while the Petitioner acted on their behalf is entirely unjustified and fundamentally very unfair.

"When an attorney's constitutional rights have been violated, we have not hesitated in the past to reverse disciplinary sanctions that were even less severe than a public reprimand." *Zauderer v. Office of Disciplinary Counsel*, supra at 684 (Brennan, J., dissenting).

B. In Attorney Discipline Proceedings, Ambiguities in Rules Are to Be Resolved in Favor of the Respondents

Disbarment cases are quasi-criminal and any disciplinary rules employed to impose disbarment must be strictly construed, resolving ambiguities in favor of the attorney charged. *In re Sealed Appellant*, 194 F.3d 666, 670 (5th Cir. 1999). A court reviews *de novo* whether an attorney's conduct us subject to sanction. Id.

The professional rights and obligations of attorneys practicing within Connecticut are governed by the Rules of Professional Conduct, adopted by the judges of the Superior Court and as revised in 1986. *Matza v. Matza*, 226 Conn. 166, 175, 627 A.2d 414 (1993).

The Petitioner was disbarred because she did not have a written fee agreement with *pro bono* clients. The Connecticut rules do not explicitly require a written fee agreement except in contingency fee cases. Yet, in *Sonick v. Ignal*, Grievance Complaint 97-0957, a Connecticut attorney who did not have a written contingency fee agreement was reprimanded, not disbarred. There is no precedent in Connecticut for an attorney to be disbarred because she did not have a written fee agreement with *pro bono* clients.

The Petitioner was disbarred because she did not have a written agreement explaining the scope of the representation with the *pro bono* plaintiffs, although she had such a written agreement with the Sullivans. The pertinent rule provides as follows:

> Rule 1.5 Fees
>
> . . . (b) When the lawyer has not regularly represented the client, the basis or rate of the fee, whether and to what extent the client will be

> responsible for any court costs and expenses of litigation, and the scope of the matter to be undertaken shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

In this case, the Petitioner fully informed all plaintiffs on December 22, 1999 that the Sullivans were assuming all fees and costs of the litigation. There was no misunderstanding on this point. The Petitioner also fully identified the scope of the representation. All plaintiffs received no fewer than seven mailings from the Petitioner and the Sullivans further elaborating on the scope of the litigation as it developed. To the extent that the requirement for a written statement outlining the scope of representation to *pro bono* clients is required by the rule, the intent of Rule 1.5 was satisfied.

The Petitioner was disbarred because she did not immediately withdraw the Sullivans from Sullivan II. Yet, the Connecticut Supreme Court decision does not mention that the Petitioner was bound by the Rules of Professional Responsibility to protect her clients' rights even when discord arose and that such obligations prevented her from immediately acceding to their wishes without further discussion about the possible adverse consequences of such an act and a meeting of all plaintiffs in the litigation.

The decision neglects to mention that the Petitioner twice wrote detailed letters to all the plaintiffs requesting that they communicate with her, and none did. Under these circumstance, the Petitioner had no choice but to move to withdraw her appearance because of the breakdown in attorney-client communications. Moreover, the decision fails to recognize that Petitioner's reluctance to withdraw the Sullivans from the case without obtaining a release from the developer was motivated by her eth-

ical obligation to protect the Sullivans from the risk of a retaliatory action by the developer. Indeed, after Judge Mottolese directed the Sullivans and their remaining co-plaintiffs to file *pro se* appearances and then withdraw from the litigation, they were immediately plagued by a threat of retaliatory suit by the developer's attorney.

The Connecticut Supreme Court decision ascribes "selfish" motives to the Petitioner. However, under scrutiny, the record reveals that despite extraordinary pressures applied by the trial court, the Petitioner's conduct was just the opposite. Without payment, the Petitioner expended hundreds of hours continuing to preserve and protect the rights and interests of all 22 plaintiffs who engaged her to challenge illegal land development in their neighborhood.

C. The Trial Court Was Biased

The trial court displayed manifest bias against the Petitioner and thereby deprived her of a fair hearing.

"Before a judgment disbarring an attorney is rendered, he should have . . . ample opportunity or explanation and defence." *Ex parte Robinson*, 86 U.S. (Wall.) 505, 511, 22 L.Ed. 205 (1873) Such "ample opportunity" to present a defense to a charge of disbarment must include an impartial decisionmaker and, if one is needed, a disinterested prosecutor. *Crowe v. Smith*, 151 F.3d 217, 228 (5th Cir. 1998).

No right is more fundamental to the notion of a fair trial than the right to an impartial judge. *Johnson v. Mississippi*, 403 U.S. 212, 216, 91 S.Ct. 1778, 29 L.Ed.2d 423 (1971).

"The truth pronounced by Justinian more than a thousand years ago, that 'impartiality is the life of justice,' is just as valid today as it was then." *United States v.*

Brown, 539 F.2d 467, 469 (5th Cir. 1976) (per curiam) (reversing attorney suspension.)

Judge Mottolese expressed his bias against the Petitioner because of her reputation as an attorney who espoused environmental protection.[8] He delayed issuing a decision on an application for temporary injunction for six months—until after irreversible environmental disruption had occurred in violation of the town's regulations and state statutes.

He took the unprecedented step of initiating and prosecuting disbarment proceedings against the Petitioner without a written complaint and otherwise in violation of § 2-47.

On multiple occasions, the Petitioner moved for his disqualification. In clear error, the judge declined and thereby deprived the Petitioner of fundamental due process. *Johnson v. Ayers*, 921 F.2d 585, 586 (5th Cir. 1991) (reversing bankruptcy court's decision to suspend attorney from practice because a "reasonable person would have a reasonable basis for questioning [the judge's] impartiality in the contempt proceeding")

D. The Court Impermissibly Considered Subsequent Discipline

In footnote 51 of the opinion in *Burton v. Mottolese*, the Connecticut Supreme Court cites various disciplinary actions involving the Petitioner as justifying her disbarment.

One such matter involves a $171,546.80 contempt fine imposed by a federal judge in proceedings initiated

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[8] For a discussion of impermissible attacks against attorneys who advocate environmental causes, see 26 *Harvard Environmental Law Review* 417 (2002).

after Judge Mottolese's disbarment order was issued.[9] While evidence of an attorney's *prior* ethical misconduct is admissible at disciplinary hearings, see, e.g, *Statewide Grievance Committee v. Shluger*, 230 Conn. 668, 678, 7 Am. Jur.2d, Attorneys At Law § 46, appellate reliance upon subsequent discipline which is subject to further appeal and potential reversal clearly violates due process.

Many of the actions identified in footnote 51 remain subject to further proceedings.[10]

Because "[t]here is no way to determine from the record what disciplinary sanction the [Connecticut Supreme] court might have imposed [if any] had it confined itself" to matters limited by its rules and precepts of due process, see, e.g., *In re Sealed Appellant*, supra, (5th Cir. 1999)(Adams, J., dissenting and concurring on other grounds), the matter should, at the least, be remanded. Id.

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[9] This order was the subject of the Petitioner's recent unsuccessful petition for writ of certiorari before this Court in *In re Egri*.

[10] Indeed, on March 16, 2004, a Superior Court judge dismissed one such action. None of the "prior disciplinary actions" involves a complaint against the Petitioner by her clients; in general, they focus upon the Petitioner's acts of judicial whistleblowing in the State of Connecticut and what she alleges to be judicial retaliation. In one matter, *Bartel v. Renard*, in which a federal judge ordered a monetary penalty jointly and severally upon the Petitioner, her client and another attorney, the Connecticut Statewide Grievance Committee initiated a complaint against the Petitioner based on publication of a newspaper article about the case; the complaint was dismissed after a hearing in the absence of evidence of professional misconduct on the part of the Petitioner. Nevertheless, the Connecticut Supreme Court cited the matter as an aggravating factor justifying the Petitioner's disbarment.

E. Disbarment Was Draconian

"[A]n attorney's license to practice [is] a 'right' which cannot lightly or capriciously be taken from him.' . . . The power to withdraw that right ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct, which affect the standing and character of the party as an attorney.' *Ex parte Wall*, 107 U.S. 265, 288 (1883).

Disbarment is an "extreme sanction." *In re Sealed Appellant* 673. Disbarment is generally not appropriate unless a lawyer engages in intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously, adversely reflects on the attorney's fitness to practice. ABA Model Standard of Attorney Discipline 5.11(b).

The record of this case is absent an iota of evidence that the Petitioner engaged in any conduct involving dishonesty, fraud, deceit or misrepresentation or that she is not fit to practice in the state court. The Connecticut Supreme Court's "casual indifference to the gravity of this injury inflicted upon [the Petitioner's] good name demeans the entire legal profession." *Zauderer*, supra.

CONCLUSION

In an unprecedented decision, the Connecticut Supreme Court affirmed the Petitioner's disbarment by a trial court which dispensed with mandatory state court rules governing disbarment proceedings. The trial judge manifested disqualifying bias. The record does not support disbarment.

Wherefore, it is requested that this Court grant the foregoing petition for writ of certiorari.

Respectfully submitted,

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APPENDIX

SUPREME COURT OF CONNECTICUT

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267 Conn. 1; 835 A.2d 998;
2003 Conn. LEXIS 488
(SC 16655)
September 9, 2003, Argued
December 16, 2003, Officially Released

NANCY BURTON

—v.—

HONORABLE A. WILLIAM MOTTOLESE

COUNSEL: Nancy Burton, with whom was Conrad Ost Seifert, for the plaintiff in error.

Eliot D. Prescott, assistant attorney general, with whom were Jane R. Rosenberg, assistant attorney general, and, on the brief, Richard Blumenthal, attorney general, for the defendant in error.

JUDGES: Sullivan, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js. In this opinion the other justices concurred.

SULLIVAN, C. J.

The plaintiff in error, Nancy Burton (plaintiff), an attorney, brings this writ of error claiming that the defendant in error, Honorable A. William Mottolese (trial court), improperly concluded that the plaintiff had violated several Rules of Professional Conduct and that the imposition of the sanction of disbarment violated her due process rights. Specifically, the plaintiff claims that the trial court: (1) violated her due process rights by failing to give her prior written notice of the charges against her; (2) lacked the authority to initiate disciplinary proceedings because such proceedings may be instituted only by filing a formal written complaint with the statewide grievance committee; (3) violated her due process rights because the trial court displayed actual bias toward her; (4) improperly concluded that she had engaged in professional misconduct; and (5) improperly imposed the sanction of disbarment. We reject all these claims and, accordingly, dismiss the writ of error.

The record discloses the following relevant facts and procedural history. On December 22, 1999, in response to a decision of the zoning board of appeals of the town of Monroe (board) to allow the use of a rock crusher during the construction of a new residential subdivision, two of the plaintiffs in the underlying action, Joseph Sullivan and Lenore Sullivan (Sullivans), organized a neighborhood meeting at a restaurant in Monroe. The purpose of the meeting was to recruit others to become coplaintiffs in an appeal from the decision of the board to allow the use of the rock crusher. Before the meeting, Joseph Sullivan prepared a sign-up sheet for those interested in becoming coplaintiffs in the appeal.[1] Also prior

[1] Specifically, the sign-up sheet stated: "Signatures To Become Co-Plaintiffs Wednesday, December 22, 1999: The following signatures represent people who agree to become co-plaintiffs with Lenore

to the meeting, Joseph Sullivan contacted the plaintiff, who agreed to make an oral presentation at the meeting. During the December 22 meeting, twenty people signed the sign-up sheets that had been circulated, agreeing to become coplaintiffs in the action to appeal from the board's zoning decision.

In addition to filing an appeal from the board's zoning decision, the plaintiff, on behalf of the Sullivans and the twenty additional people who had signed the sign-up sheets, filed the action underlying this writ of error, which sought declaratory and injunctive relief to prevent the development of the subdivision until additional permits were obtained. Thereafter, the defendants in the action for declaratory relief, the town of Monroe and Hammertown Estates, LLC, moved to dismiss counts one and two of the complaint, claiming that the plaintiffs in that underlying action had failed to exhaust their administrative remedies. On June 30, 2000, the trial court granted the defendants' motion, dismissing counts one and two of the complaint seeking declaratory and injunctive relief.

Thereafter, on July 18, 2000, the Sullivans sent a letter to the plaintiff indicating that the Sullivans no longer wanted to pursue litigation regarding the new subdivision. The Sullivans also sent a copy of the letter to the trial court.[2] Moreover, Joseph Sullivan testified that he

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& [Joseph] Sullivan, in an appeal to the Superior Court of Connecticut of the approval by the [board] to grant a waiver to allow 'Rock Processing' equipment to be placed in a residential zone; an action which normally is prohibited by the Codes of the Town of Monroe. The undersigned hereby agree to become co-plaintiffs in the legal proceeding pertaining to the waiver granted by the [board] for placing 'Rock Processing' equipment on the construction site for File # 1075- 407 Hammertown Road Project."

[2] The letter to the plaintiff stated in part: "The purpose of this letter is to inform you in writing what Lenore & I told you on Sunday

orally had told the plaintiff on July 16, 2000, that he and Lenore Sullivan no longer were interested in pursuing declaratory and injunctive relief. Joseph Sullivan also testified that he had sent the plaintiff an e-mail, a facsimile (fax) and a certified letter asking her not to represent them in any motion for reargument or any other appeal of the trial court's decision on the motion to dismiss.

Notwithstanding these communications, the plaintiff, on July 20, 2000, moved to reargue the trial court's decision dismissing counts one and two of the complaint seeking declaratory and injunctive relief. The trial court denied the plaintiff's motion on August 16, 2000. Thereafter, on August 30, 2000, the plaintiff moved to withdraw her appearance, claiming that there had been "a complete breakdown in communications" between those listed as plaintiffs in the underlying action and the plaintiff in the present case.

Additionally, prior to the trial court's decision dismissing counts one and two of the complaint seeking declaratory and injunctive relief, the defendants in that underlying action had moved for sanctions against the

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evening, July 16th, namely, that we do not wish to be active participants in any legal actions to make [a] motion to reargue the Memorandum of Decision by Judge Mottolese, dated June 30th. We do not want to appeal the Decision in anyway. Furthermore, we agree with the Judge's findings, and feel we have had our day in court, so to speak, on the action for a temporary and permanent injunction seeking to prevent commencement of development of a resubdivision consisting of 18 residential building lots. . . . In summary, Lenore and I do not want to be part of any further legal actions to make motions to reargue, or change, or amend any part of Judge Mottolese Memorandum of Decision. I hope I have left no room for doubt as to my desire on legal actions NOT to be taken here. . . . Following any decision on the Motion to Dismiss, I would like to discontinue any further legal services by you, and I thank you for your efforts on our behalf."

plaintiff for filing motions and other pleadings subsequent to the defendants' filing of a motion to dismiss. The trial court scheduled a hearing on the motions for sanctions for September 28, 2000. On September 22, 2000, the plaintiff moved, nominally on behalf of the purported plaintiffs in the underlying litigation, for a continuance of that hearing, claiming that she already was engaged in a jury trial for that day.[3] Thereafter, on September 28, the plaintiff failed to appear at the hearing on the motion for sanctions. As a result, the trial court, pursuant to Practice Book § 5-10[4] and General Statutes § 51-84 (b),[5] fined the plaintiff $ 100. Moreover, at the September 28, 2000 hearing, counsel for the defendants claimed that one of the purported plaintiffs in the underlying action had not authorized the plaintiff to file an action seeking declaratory and injunctive relief in her name. Accordingly, the trial court ordered that the hearing on the motions for sanctions be rescheduled for October 31, 2000. Further, the trial court stated that the issues to be determined on that date included "all motions for sanctions; motions for allowance of counsel fees by parties appearing on September 28, 2000, includ-

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[3] The trial court, in its memorandum of decision concluding that the plaintiff had violated several Rules of Professional Conduct, explained that the plaintiff's September 22, 2000 motion for continuance was never adjudicated because it was not filed on the prescribed form and contained incomplete information.

[4] Practice Book § 5-10 provides: "Counsel who fails to appear on a scheduled date for any hearing or trial or who requests a continuance without cause or in any other way delays a case unnecessarily will be subject to sanctions pursuant to General Statutes § 51-84."

[5] General Statutes § 51-84 (b) provides: "Any such court may fine an attorney for transgressing its rules and orders an amount not exceeding one hundred dollars for any offense, and may suspend or displace an attorney for just cause."

ing Katherine Finch; letter received by the court from Lenore and [Joseph] Sullivan; motion of [the plaintiff] to withdraw as counsel."

Thereafter, on October 31, 2000, the plaintiff moved, again nominally on behalf of the purported plaintiffs in the underlying action, to disqualify Judge Mottolese from the proceedings. In her motion, the plaintiff claimed that the judge improperly had sanctioned her for failing to appear at the September 28 hearing because she was properly engaged elsewhere, namely, jury selection for another trial. Moreover, the plaintiff claimed that the sanction of $ 100 was "tantamount to a tax on [the plaintiff's other client] for the privilege of having his attorney attend his trial during jury selection" and that the court's sanction manifested a bias against her. The plaintiff also moved to vacate the order sanctioning her for failing to appear at the September 28, 2000 hearing. In addition, the plaintiff alleged that the trial court had engaged in gender bias against her. In response to the charge of gender bias, the trial court ordered the plaintiff to submit an affidavit within that next week specifying each instance of gender bias that the plaintiff was alleging.[6]

Subsequently, on November 9, 2000, the trial court notified the parties in the underlying action that the hearing on all motions for sanctions was rescheduled to November 27, 2000. In that order, the court specified that "if necessary, the court will adjudicate the status of each plaintiff to ascertain if they are properly plaintiffs in this case on December 12, 2000 . . . ." On November 29, 2000, the plaintiff filed a second motion, on behalf of the purported plaintiffs in the underlying action, to

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[6] The trial court also granted the defendants' motions for attorney's fees arising out of the September 28, 2000 hearing in the amount of $450 per attorney.

disqualify the trial court, claiming that the sanctions ordered by the court on September 28 and October 31 were a "reflection and product of serious personal animosity, gender bias, prejudice and such orders are unconstitutional." On that same day, the trial court held a hearing on the motions for sanctions, at which it ordered the plaintiff to contact all the purported plaintiffs in the underlying action and to notify the trial court whether they wanted to pursue litigation in the declaratory judgment action.[7] Also at that hearing, the trial court noted that there were two issues that remained in the case that the court felt it had the obligation to address. The first issue, the court explained, was "whether [the plaintiff] continued to participate in the litigation by filing pleadings and taking action without the consent of her clients." The second issue was the plaintiff's assertion of gender bias by the trial court.[8]

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[7] In response to this order, the plaintiff, on behalf of the purported plaintiffs, moved the court, on December 6, 2000, for an extension of time claiming that, in order for her to comply with the court's order, she required more time to communicate with the defendants in the underlying action regarding a "stipulated withdrawal."

[8] Specifically, the trial court stated: "Issue number two is, the court ordered [the plaintiff] to file within one week an affidavit setting forth specific instances of gender bias engaged in by the court. I want the record to note that [the plaintiff] filed a paper which is not an affidavit because it's not under oath and it's not the equivalent of an affidavit because even though it indicated that it was signed under penalties of perjury . . . that has no legal effect whatsoever unless that penalty of perjury statute is complied with, and it was not. So [the plaintiff] did not comply with the order of this court. The . . . court considers the allegations extremely, extraordinarily serious, as well as the allegations renewed in the November 29 motion to disqualify. I believe those allegations to be totally baseless and without foundation and made recklessly or—and/or intentionally against the court, and I am going to carefully consider whether or not the allegations made against the court, which the court believes tend to seri-

Subsequently, on December 12, 2000, the court began its inquiry into whether the plaintiff was authorized to bring the action for declaratory and injunctive relief. The inquiry commenced with the testimony of several of the purported plaintiffs from the underlying action, who revealed either that they were not aware that, by signing the circulated sign-up sheets, they were authorizing the plaintiff to file an action in their names, or that they had asked the plaintiff to withdraw their names from the action and that she had failed to do so.[9] The plaintiff

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ously undermine confidence in the institution of the court, whether those allegations and the transcripts of the proceedings should be referred to the grievance committee for further action. The court is also going to consider whether the court itself should take disciplinary action against [the plaintiff] by way of reprimand or other appropriate sanction."

[9] One of the plaintiffs in the underlying action, Jule Toma, testified that although she "probably unwittingly" had authorized the plaintiff to include her name as a plaintiff in the underlying action, she had asked the plaintiff to withdraw her from the litigation after she was subpoenaed for a deposition in October, 2000. Specifically, in response to the trial court's question of whether the plaintiff was authorized to include her name in the declaratory relief action, Toma stated: "Probably unwittingly. I think we all went to a meeting and signed a sheet in support of possibly not having the rock crusher there because we've all been exposed to rock crushing right in that area for years, and I think probably I could say unwittingly I became a part of this whole thing, and was surprised to get a subpoena in October for a deposition. And at that time stated I wanted to withdraw . . . ."

Additionally, five other purported plaintiffs in the underlying action testified that they believed they were signing a petition in support of removing the rock crusher rather than an authorization to file an action in their names. Specifically, David G. Boston, Jr., testified: "Yeah, my signature's there, and I do recall signing the document at the meeting in question, December 22nd, but as Mrs. Toma stated, and I think—and I don't want to speak for all the plaintiffs [in the underlying action], but I think at least myself, also thought that it was, in fact, more of a petition to come to [the Sullivans'] aid to stop the rock crushing than, you know, it was anything that would involve us deeper in any kind of litigation."

cross-examined these witnesses. After the testimony of the plaintiffs in the underlying action, the trial court continued the judicial inquiry until December 21, 2000. On that date, the plaintiff filed her third motion to disqualify Judge Mottolese, claiming that the trial court falsely accused her of having filed a complaint against it in a prior case. In addition, the plaintiff moved to suspend the proceedings, claiming that the trial court had engaged in "improper judicial intimidation of [the] plaintiffs in [the underlying case] . . . ." Notwithstanding these motions, on December 21, 2000, the trial court continued its inquiry into the plaintiff's authorization to bring the underlying action. As in the December 12 hearing, the inquiry involved witnesses testifying that the plaintiff was not authorized to bring an action in their names and that they had asked her to withdraw them from the case and that the plaintiff had failed to secure their withdrawal.[10] Additionally, the plaintiff was

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Moreover, Leon Ambrosey testified: "Well, I thought I was just signing like everybody else, like a petition just to like help them out, like if they needed you as a witness or some kind of thing like that, nothing to retain a lawyer." Cynthia Ambrosey testified that: "I thought [the sign-up sheet] was a petition against the rock crusher because when, you know, we were building our house we had problems with the Renz' with the rock crushing, and it was like, oh no, another crusher in the neighborhood, and that's it." Additionally, John S. Bodie stated that he thought the sign-up sheet was "just the . . . backing up of people who didn't want a rock crusher and I believe it was supposed to be within so many feet of their house. So, I thought we were just signing a petition just to get the town to get someone to do it right. . . . So I just thought we were showing interest that there may be a concern." Bodie also testified that at the time he signed the circulated sign-up sheet, he did not think he was authorizing the plaintiff to commence litigation in his name. Finally, Irene Jackiewicz testified that she did not authorize the plaintiff to include her name in the litigation and that she also thought she was signing a petition.

[10] As in the December 12, 2000 hearing, the purported plaintiff Finch testified that she believed the sign-up sheet circulated at the

permitted to, and did in fact, cross-examine all the witnesses. At one point in that hearing, when Joseph Sullivan was being examined by counsel for the defendants in the underlying action, the plaintiff objected to the questioning, claiming that she was "not exactly sure

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December 22, 1999 meeting was "in the form of a petition. The more names, the stronger the cause for the objection to the rock crusher and the blasting that was gonna be going on at the development site . . . ."

Moreover, Joseph Sullivan, one of the plaintiffs in the underlying case, testified that he had instructed the plaintiff to withdraw the case on July 16, 2000. He stated: "There was a conversation on Sunday July the 16th, early in the evening with my wife and [the plaintiff] on the phone . . . . And what it was, there was a disagreement between my wife and myself and [the plaintiff]. Not between my wife and myself, we both agreed. [The plaintiff] was suggesting, or giving legal counsel, that we should make a motion to reargue on a decision that had been made by a judge about the zoning redefinition case. I had no interest in pursuing that line of argument. I read thoroughly the judge's finding and agreed with the logic that he had there. My only interest at that time was removing a rock crusher . . . at that very day was still on the property some two months after it had been authorized by the town . . . . So I clearly told her, in the strongest of terms I could communicate, I don't know what more I could have said, that I absolutely did not want her acting on my behalf to reargue the judgment. She then did say that she owed it [to] all of the other plaintiffs [in the underlying action] to reopen it, and it wasn't just up to me. So I said, well, since I'm paying for it all . . . that I was saying you're not acting on my behalf and what do I have to do to formally stop you from doing this. She told me I had to inform her in writing. So that very night, I sent e-mails to her, which I have copies of here. I also sent a certified letter telling her not to represent—not to reargue this motion. And then I also faxed the same information."

The following colloquy also occurred when counsel for the defendants in the underlying action examined Joseph Sullivan.

"[Counsel for the defendant town of Monroe]: Now after July 27th, did you authorize any additional filings and motions in this case?

"[Joseph Sullivan]: Absolutely not.

"Q. So there was no authorization for a motion for protective order?

"A. No

"Q. Motions for continuances?

"A. No, sir."

where we are in these proceedings." The trial court explained: "It is the court's inquiry into your alleged unauthorized representation of numerous plaintiffs, your alleged unauthorized continuation of activity in this lawsuit on behalf of those plaintiffs, including the Sullivans, and what sanctions should ensue from those . . . should the court find that, in fact, you have engaged in this type of conduct."

The trial court's inquiry into the plaintiff's conduct during the course of the underlying litigation continued on December 22, 2000, with the testimony of the named plaintiff in the underlying case, Lenore Sullivan. At that hearing, Lenore Sullivan testified that she had explained to the plaintiff that she no longer wanted to take part in the litigation and wanted it "over with." She also testified that she had never felt that the trial court was biased against any of the female plaintiffs in the underlying litigation, contrary to the plaintiff's allegation of gender bias. Lenore Sullivan also expressed confusion regarding an appeal to the Appellate Court that the plaintiff had taken challenging the decision of the trial court ordering sanctions for the plaintiff's failure to appear at the September 28, 2000 hearing. Specifically, Lenore Sullivan testified that she did not know of the appeal and had not authorized the plaintiff to take an appeal of the trial court's order.

At the conclusion of the December 22, 2000 hearing, the trial court summarized what it felt were the remaining issues in the case. The trial court stated: "As far as the court is concerned, the court has heard from the plaintiffs [in the underlying action], and that completes that phase of the court's inquiry. Now, [the plaintiff's] conduct has been seriously called into question by the evidence that's been presented so far. And so . . . I want to give [the plaintiff] every opportunity to present what-

ever evidence [the plaintiff] feels is appropriate within the bounds of admissibility, obviously. . . . I'm going to give you the three issues as I see them. There may be others that are collateral to them. But the first issue is your authority or lack of authority to represent the numerous plaintiffs other than the two Sullivans. Secondly, your continued activity in the case after being directed by the Sullivans to take no further action in the case. And third, the issue of your apparent divided loyalty between your duty to your client and your own self-protection or aggrandizement. Those are the three major issues that I see. But you may feel free to offer evidence on any other issue that has come up in the case as well. And you don't have to do it today; I'll give you an opportunity on another day if you wish to come back with an attorney. It's up to you. You may testify in your own behalf without one if you wish."

Subsequently, on January 4, 2001, the court conducted a hearing on those three issues.[11] The plaintiff testified in her own behalf over the course of six days. At the end of the plaintiff's testimony, the trial court again notified the parties regarding the specific issues involved in the judicial inquiry. Specifically, the trial court outlined the particular Rules of Professional Conduct that it felt were implicated in the plaintiff's conduct, namely, rules 1.2,[12]

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[11] Prior to the start of this hearing, the plaintiff again moved to disqualify the trial court, which the trial court denied.

[12] Rule 1.2 (a) of the Rules of Professional Conduct provides in relevant part: "A lawyer shall abide by a client's decisions concerning the objectives of representation . . . and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement . . . ."

1.5 (b),[13] 1.7 (b),[14] 1.8 (f),[15] 1.16 (a) (3),[16] 3.3,[17] 3.5 (3)[18] and 8.2.[19]

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[13] Rule 1.5 (b) of the Rules of Professional Conduct provides in relevant part: "When the lawyer has not regularly represented the client, the basis or rate of the fee, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and the scope of the matter to be undertaken shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. . . ."

[14] Rule 1.7 (b) of the Rules of Professional Conduct provides: "A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

"(1) The lawyer reasonably believes the representation will not be adversely affected; and

"(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved."

[15] Rule 1.8 (f) of the Rules of Professional Conduct provides: "A lawyer shall not accept compensation for representing a client from one other than the client unless:

"(1) The client consents after consultation;

"(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

"(3) Information relating to representation of a client is protected as required by Rule 1.6."

[16] Rule 1.16 (a) of the Rules of Professional Conduct provides in relevant part: "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation . . . if . . . (3) the lawyer is discharged."

(footnotes 17, 18 and 19 appear on following page)

After all parties in the underlying case filed briefs[20] on the issues raised by the judicial inquiry, the trial court,

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[17] Rule 3.3 (a) of the Rules of Professional Conduct provides: "A lawyer shall not knowingly:

"(1) Make a false statement of material fact or law to a tribunal;

"(2) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

"(3) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

"(4) Offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures."

[18] Rule 3.5 of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not . . . (3) Engage in conduct intended to disrupt a tribunal."

[19] Rule 8.2 (a) of the Rules of Professional Conduct provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

[20] As the trial court noted, the brief submitted by the plaintiff to the trial court failed to discuss the facts of the inquiry or the applicable rules of professional conduct. Rather, the plaintiff's "supplemental brief" again attacked the trial court, as well as other judges, for their alleged personal and professional bias against the plaintiff. For instance, the plaintiff alleged that the trial court "harbors a personal bias against [the plaintiff], which is substantial, which frequently manifested itself throughout the course of these entire proceedings, which existed prior to the institution of these proceedings, which the trial court should have openly and directly addressed at the outset of these proceedings and which required the disqualification [of] the trial court from these proceedings. The trial court's

on July 17, 2001, issued a memorandum of decision concluding that the plaintiff had violated several Rules of Professional Conduct and that her "numerous transgressions" compelled a finding that the plaintiff's "professional performance fell below the accepted standard of competence envisioned by rule 1.1." To begin, the trial court found that the plaintiff had engaged in unauthorized representation of twenty of the plaintiffs except for the Sullivans and another couple, Richard Hunter and Patricia S. Hunter (Hunters).[21] The unauthorized representation was a result of the plaintiff's failure to explain adequately to those in attendance at that first meeting the nature and scope of the proceeding and the potential conflict of interests in representing multiple parties. Consequently, the trial court found, the twenty people who had signed the sign-up sheet honestly believed, not that they were lending their names to litigation, but instead, that they were merely signing a petition for presentation to the town's land use authorities. The trial court concluded, moreover, that the plaintiff failed to comply with rule 1.5 (b) of the Rules of Professional Conduct, requiring a written agreement describing the scope of the representation and potential exposure to costs. The trial court also found that the plaintiff had

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participation in this matter has been rife with judicial misconduct." The plaintiff also alleged that, "the trial court's misconduct cannot be separated from an ongoing judicial vendetta involving itself and Hons. Howard J. Moraghan, Edward F. Stodolink and Socrates H. Mihalakos . . . ." The plaintiff also concluded that "Hon. Judges Skolnick and Moran may be credited with questionable conduct which has promoted the abuse of power and abuse of the plaintiffs [in the underlying action] and their counsel in this matter."

[21] The trial court inferred the authorization of the Hunters because Patricia S. Hunter testified at the hearing on the defendants' motion to dismiss counts one and two of the complaint seeking declaratory and injunctive relief.

engaged in unauthorized representation of clients as a result of continuing to file pleadings in the underlying action after being instructed by the Sullivans to cease litigation. These actions, the trial court concluded, were wilful and violated rules 1.2 and 1.16 (a) (3) of the Rules of Professional Conduct. The trial court also found that the plaintiff had engaged in unauthorized representation by failing to communicate to the plaintiffs in the underlying action the written offers of settlement by the defendants in that action, including the offers by those defendants to waive all claims for fees and costs in return for a withdrawal of the case,[22] in violation of rules 1.2 and 1.4.[23] Additionally, the trial court determined that the plaintiff had failed to advise the other plaintiffs in the underlying case that the Sullivans had notified her to take no further action in the case, resulting in a violation of rule 1.4.

The trial court also concluded that the plaintiff's conduct resulted in a conflict of interest.[24] In addition, the trial court concluded that the plaintiff had made several

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[22] As described later in more detail, this finding arises out of the trial court's determination that counsel for the defendants in the underlying action made written offers of settlement to the plaintiff, including offers to waive all claims for fees and costs and to waive the $450 counsel fees awarded to them as sanctions, which were not communicated to the plaintiffs in the underlying action by the plaintiff in the present writ of error. See footnote 42 of this opinion.

[23] Rule 1.4 of the Rules of Professional Conduct provides:

"(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

"(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

[24] The trial court concluded that the plaintiff's behavior constituted a conflict of interest for several reasons. First, the trial court

misrepresentations to the court. Those misrepresentations to the court included her claim that there had been a complete breakdown in communication between her and the plaintiffs in the underlying case and her allegation of gender bias against the court. The trial court also concluded that the plaintiff had made misrepresentations to the plaintiffs in the underlying case by warning them that they could be subject to sanctions when, as the trial court found, the plaintiff knew or should have known that the defendants had no intention of seeking sanctions against the plaintiffs in that action. The trial court also found that the plaintiff's unsubstantiated claim of gender bias by the trial court and other judges in this state constituted a "serious [offense] against the institution of our Connecticut judicial system in that she has impugned its integrity, undermined public confidence in the system as a minister of justice, has degraded it and brought it into public disrespect and dishonor." This conduct, the trial court concluded, violated rules 3.5 (3), 8.2 and 8.4 (3) and (4).[25] Finally, the trial court found that the plain-

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found that Diane Mellon, a neighborhood resident who wanted to join the litigation, paid the plaintiff $ 1000 with the intention of joining the action as a plaintiff, but that the plaintiff in the present case failed to add her as a plaintiff in th underlying action. Additionally, the trial court found that the pl iff failed to notify other purported plaintiffs of the receipt of th money.

The trial court also determined that the plaintiff filed pleadings after being instructed not to do so, not because she was concerned with the interests of her clients, but rather because she was concerned about protecting her own individual interests. As evidence of this violation, the court looked to the fact that the plaintiff not only sought a release of costs and penalties for her clients, but also a personal release for any costs and penalties she herself may have been assessed.

[25] Rule 8.4 of the Rules of Professional Conduct provides in relevant part:

(*footnote continued*)

tiff's behavior throughout the underlying proceedings evinced a lack of competence in the practice of law.

After concluding that the plaintiff had violated several Rules of Professional Conduct, the court set a date for a hearing to determine the proper sanction that should be imposed on the plaintiff.[26] Specifically, the trial court, in its memorandum of decision, notified the plaintiff that the range of sanctions available to the court included those set forth in Practice Book §§ 2-37[27] and

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"It is professional misconduct for a lawyer to . . .

"(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or]

"(4) Engage in conduct that is prejudicial to the administration of justice . . . ."

[26] In the interim, on January 29, 2001, the trial court, *Brennan, J.*, granted the defendants' previously filed motion for summary judgment on the third count of the underlying complaint seeking declaratory and injunctive relief.

[27] Practice Book § 2-37 (a) provides: "A reviewing committee or the statewide grievance committee may impose one or more of the following sanctions and conditions in accordance with the provisions of Sections 2-35 and 2-36:

"(1) reprimand;

"(2) restitution;

"(3) assessment of costs;

"(4) an order that the respondent return a client's file to the client;

"(5) a requirement that the respondent attend continuing legal education courses, at his or her own expense, regarding one or more areas of substantive law or law office management;

"(6) an order to submit to fee arbitration;

"(7) with the respondent's consent, an order to submit to periodic audits and supervision of the attorney's trust accounts to insure compliance with the provisions of Section 2-27 and the related Rules of Professional Conduct;

(*footnote continued*)

2-44,[28] and in General Statutes § 51-84, including suspension, disbarment and counsel fees. Subsequently, on November 2, 2001, the trial court issued a separate memorandum of decision regarding the appropriate sanction to be imposed as a result of the plaintiff's misconduct. In that memorandum of decision, the trial court concluded that the evidence revealed a pattern of "pervasive misconduct" on the part of the plaintiff. This misconduct, the trial court determined, was of heightened seriousness because it was "directed toward the administration of justice." Consequently, the trial court ordered that the plaintiff be disbarred from the practice of law and that she be prohibited from applying for readmission for a period of five years.[29] This writ of error followed.

"(8) with the respondent's consent, a requirement that the respondent undertake treatment, at his or her own expense, for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse."

[28] Practice Book § 2-44 provides: "The superior court may, for just cause, suspend or disbar attorneys and may, for just cause, punish or restrain any person engaged in the unauthorized practice of law."

[29] The trial court also specifically ordered that, as conditions on the plaintiff's application for readmission to the bar, the plaintiff: (1) complete a course in Connecticut civil practice and procedure at an accredited law school; (2) complete a course in professional responsibility and legal ethics at an accredited law school; (3) pass the multistate examination in professional responsibility administered under the auspices of the Connecticut bar examining committee; and (4) "demonstrate to the satisfaction of the reinstatement panel appointed pursuant to Practice Book § 2-53 that the [plaintiff] has achieved such a degree of rehabilitation as to encourage a belief that (a) she will conduct her professional life with due respect for the Connecticut judiciary and the judicial process which she has been sworn to uphold, (b) she is prepared to accept responsibility for her actions and will refrain from blaming judges and others for any adverse result

In this writ of error, the plaintiff claims that the trial court: (1) violated her due process rights by failing to give her prior written notice of the charges against her; (2) lacked the authority to initiate disciplinary proceedings because such proceedings may be instituted only by filing a formal written complaint with the statewide grievance committee; (3) violated her due process rights because the trial court displayed actual bias toward her; (4) improperly concluded that she had engaged in professional misconduct; and (5) improperly imposed the sanction of disbarment.[30] Additional facts will be set forth as necessary.

I

The plaintiff first claims that her due process rights were violated because the trial court failed to give her prior written notice of the charges against her. The trial court claims in response that it complied with due process requirements by providing the plaintiff with reasonable notice of the charges against her. We agree with the trial court.

"At their core, the due process clauses of the state and federal constitutions require that one subject to a sig-

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which she may suffer in a particular case, (c) she will be truthful in all of her dealings with the court."

[30] The plaintiff also, in her writ of error, sought to reverse the trial court's October 31, 2000 grant of the motions for sanctions and attorney's fees by the defendants in the underlying action. The trial court moved this court to dismiss the portion of the plaintiff's writ of error challenging the sanction and award of attorney's fees, because the plaintiff had failed to challenge them within the time allowed by the rules of practice. Because the plaintiff had failed timely to challenge the sanction and award of attorney's fees, we granted the trial court's motion to dismiss. Accordingly, the plaintiff's writ of error includes only the trial court's order of disbarment.

nificant deprivation of liberty or property must be accorded adequate notice and a meaningful opportunity to be heard. . . . See *CFM of Connecticut, Inc.* v. *Chowdhury*, 239 Conn. 375, 393, 685 A.2d 1108 (1996) (As a procedural matter, before imposing . . . sanctions, the court must afford . . . a proper hearing on the . . . [proposed] sanctions. . . . There must be fair notice and an opportunity for a hearing on the record. . . .), overruled on other grounds, *State* v. *Salmon*, [250 Conn. 147, 154-55, 735 A.2d 333 (1999)]; see also *Statewide Grievance Committee* v. *Botwick* [226 Conn. 299, 308, 627 A.2d 901 (1993)] (before [discipline may be imposed], attorney [is] entitled to notice of charges, fair hearing and appeal to court for determination of whether he was deprived of due process)." (Internal quotation marks omitted.) *Briggs* v. *McWeeny*, 260 Conn. 296, 318, 796 A.2d 516 (2002).

"Because a license to practice law is a vested property interest and disciplinary proceedings are 'adversary proceedings of a quasi- criminal nature,' an attorney subject to discipline is entitled to due process of law." *Kucej* v. *Statewide Grievance Committee*, 239 Conn. 449, 462, 686 A.2d 110 (1996), cert. denied, 520 U.S. 1276, 117 S. Ct. 2457, 138 L. Ed. 2d 214 (1997). "Due process is inherently fact-bound because due process is flexible and calls for such procedural protections as the particular situation demands. . . . The constitutional requirement of procedural due process thus invokes a balancing process that cannot take place in a factual vacuum." (Internal quotation marks omitted.) *Thalheim* v. *Greenwich*, 256 Conn. 628, 648, 775 A.2d 947 (2001). Accordingly, "the determination of the particular process that is due depends on the nature of the proceeding and the interests at stake. . . . In attorney disciplinary proceedings, two interests are of paramount importance. On

the one hand, we must not tie the hands of grievance committees and trial courts with procedural requirements so strict that it becomes virtually impossible to discipline an attorney for any but the most obvious, egregious and public misconduct. On the other hand, we must ensure that attorneys subject to disciplinary action are afforded the full measure of procedural due process required under the constitution so that we do not unjustly deprive them of their reputation and livelihood." (Citation omitted; internal quotation marks omitted.) *Kucej* v. *Statewide Grievance Committee*, supra, 462-63; see also *Mathews* v. *Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) ("Due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. . . . [Rather] due process is flexible and calls for such procedural protections as the particular situation demands." [Citation omitted; internal quotation marks omitted.]).

To satisfy the requirements of due process, attorneys subject to disciplinary action must receive notice of the charges against them. "In the context of attorney misconduct proceedings, this court previously has stated that notice must be sufficiently intelligible and informing to advise the . . . attorney of the accusation or accusations made against [her], to the end that . . [she] may prepare to meet the charges against [her] . . . . If this condition is satisfied, so that the accused is fully and fairly apprised of the charge or charges made, the complaint is sufficient to give [her] an opportunity to be fully and fairly heard . . . . This court also has explained that a hearing such as this is not the trial of a criminal or civil action or suit, but an investigation by the court into the conduct of one of its own officers, and that, therefore, while the complaint should be sufficiently informing to advise the . . . attorney of the

charges made against [her], it is not required that it be marked by the same precision of statement, or conformity to the recognized formalities or technicalities of pleadings, as are expected in complaints in civil or criminal actions." (Citation omitted; internal quotation marks omitted.) *Thalheim* v. *Greenwich*, supra, 256 Conn. 649-50; see also *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (due process entitles tenured public employee to "*oral or written notice* of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story" before being terminated [emphasis added]). Thus, the notice afforded to an attorney subject to a disciplinary hearing may be oral or written, as long as it adequately informs the attorney of the charges against him or her and allows him or her to prepare to address such charges.

Similarly, an attorney subject to disciplinary proceedings must be given reasonable notice of the charges against him or her "before *the proceedings* commence . . . ." (Emphasis in original.) *In re Flanagan*, 240 Conn. 157, 174, 690 A.2d 865, cert. denied sub nom. *Flanagan* v. *Judicial Review Council*, 522 U.S. 865, 118 S. Ct. 172, 139 L. Ed. 2d 114 (1997). " 'The proceedings' in advance of which reasonable notice must be given . . . are not the probable cause proceedings because those proceedings are investigatory, rather than adjudicatory, in nature." Id., 175. Accordingly, the issue presented by the present case is whether the plaintiff was afforded reasonable notice of the charges against her prior to the adjudicatory proceedings.

In *Briggs* v. *McWeeny*, supra, 260 Conn. 303, the trial court, at a hearing on an application for a prejudgment remedy, was notified by one of the defendants in the

underlying litigation in that case that the plaintiff, an attorney, had attempted to suppress a report that was of evidentiary value to the defendants. After learning of those allegations, the trial court scheduled a hearing on the allegations of misconduct. Id. In its order, the trial court identified specific Rules of Professional Conduct that were relevant to the inquiry; the order also provided that the trial court would entertain any motions for sanctions or disciplinary action against the plaintiff. Id. After the three day hearing on the allegations of misconduct, the trial court issued a memorandum of decision concluding that the plaintiff had violated several Rules of Professional Conduct by suppressing the report. Id. The trial court also determined that the plaintiff had failed to comply with her continuing duty to disclose, pursuant to Practice Book § 13-15,[31] which in turn constituted a violation of rule 3.4 (1)[32] of the Rules of Professional Conduct. Id., 304.

In her writ of error to this court, the plaintiff in *Briggs* claimed that the trial court's failure to notify her specifically that her alleged noncompliance with § 13-15 would be included in the misconduct inquiry violated her due process rights. Id., 317. This court first explained

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[31] Practice Book § 13-15 provides in relevant part: "If, subsequent to compliance with any request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection . . . that party shall promptly notify the other party, or the other party's attorney, and file and serve . . . a supplemental or corrected compliance."

[32] Rule 3.4 of the Rules of Professional Conduct provides in relevant part: "A lawyer shall not:

> "Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act . . . ."

that the notice given to an attorney need not refer to specific Rules of Professional Conduct. Id., 319. Rather, to satisfy due process standards, the notice "must apprise the attorney of the transactions that form the basis of the allegations of misconduct." Id. Because the notice given to the plaintiff in that case, namely, the trial court's order regarding the hearing on the allegations of misconduct, "clearly stated that the trial court's inquiry would concern" the plaintiff's attempt to suppress the report, the plaintiff was adequately apprised that her actions regarding the report at issue. Id., 320. Thus, the absence of a specific reference to § 13-15 in the trial court's order regarding the hearing on the allegations of misconduct did not violate the plaintiff's due process rights.

In the present case, the plaintiff equally was informed adequately of the charges against her. Specifically, after the court's inquiry into the allegations of misconduct, including several days of testimony from the purported plaintiffs in the underlying case, the trial court specifically outlined what it considered to be the three issues relevant to the plaintiff's adjudicatory proceeding. Thus, the trial court stated: "The first issue is [the plaintiff's] authority or lack of authority to represent the numerous plaintiffs other than the two Sullivans. Secondly, your continued activity in the case after being directed by the Sullivans to take no further action in the case. And third, the issue of your apparent divided loyalty between your duty to your client and your own self-protection or aggrandizement." The trial court then gave the plaintiff an opportunity to present evidence and to testify in her own behalf regarding those specific issues. As previously noted, the plaintiff was afforded a full and fair opportunity to challenge the evidence presented at the court's inquiry into her conduct, and the plaintiff in fact

testified on her own behalf in response to the trial court's articulation of those three issues over the course of six days.

Our conclusion that the plaintiff was afforded adequate notice of the charges against her is supported by additional evidence that the plaintiff had received notice of the allegations of misconduct even before the initial inquiry into her conduct was completed. For instance, the trial court's order of September 28, 2000, stated that a hearing scheduled for October 31, 2000, would include the matter of the "letter received by the court from Lenore and [Joseph] Sullivan" claiming that they had directed the plaintiff no longer to pursue litigation. Further, after the October 31 hearing was rescheduled because of the plaintiff's allegation of gender bias, the court issued an order scheduling a hearing involving all motions for sanctions. The trial court's order also stated that the court would adjudicate the status of each plaintiff in the underlying litigation to determine if they were properly plaintiffs in the underlying action. Moreover, at the inquiry into whether the purported plaintiffs in the underlying action were properly plaintiffs, the trial court informed those purported plaintiffs who had been subpoenaed, in the presence of the plaintiff, that they were in court because the trial court had "determined at one of the prior proceedings that it was vital to the administration of justice that it determine whether [the purported plaintiffs in the underlying case] (a) initially authorized [the plaintiff] to include your name as plaintiffs, [and] (b) . . . if you did whether at anytime you instructed [the plaintiff] to withdraw your name from the litigation." Additionally, after the court heard the testimony and evidence of the plaintiff, the court identified the specific Rules of Professional Conduct that it perceived to be implicated by the plaintiff's behavior, hoping to assist

her in the preparation of her brief to the court. In this way, the plaintiff in the present case was afforded significantly more notice than the plaintiff received in *Briggs*, where we concluded that the notice received by the plaintiff was sufficient. Thus, we conclude that both the written orders of the court issued during the investigation into the allegations of misconduct and the oral notice given directly to the plaintiff prior to the adjudicatory phase of the inquiry into her misconduct sufficiently apprised the plaintiff of the transactions that formed the basis of the allegation of misconduct. Accordingly, we reject the plaintiff's claim that her due process rights were violated by the failure of the trial court to give specific written notice of the charges against her.

II

The plaintiff next claims that the trial court lacked the authority to initiate disciplinary proceedings against her because such proceedings may be instituted only by filing a formal written complaint with the statewide grievance committee. The trial court claims in response that it has the inherent authority to discipline an attorney regardless of whether a complaint has been filed with the statewide grievance committee. We agree with the trial court.

As a threshold matter, we address the standard of review. In the present case, the issue before us is whether the trial court properly determined that it had the inherent authority to initiate disciplinary proceedings against the plaintiff in the absence of a formal written complaint to the statewide grievance committee. Because this presents a question of law, our review is plenary. Therefore, "we must decide whether [the trial

court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Olson* v. *Accessory Controls & Equipment Corp.*, 254 Conn. 145, 156, 757 A.2d 14 (2000).

Turning to the merits of the plaintiff's claim, we first note that "the Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar." (Internal quotation marks omitted.) *Massameno* v. *Statewide Grievance Committee*, 234 Conn. 539, 553, 663 A.2d 317 (1995). Thus, "the judiciary has the power to admit attorneys to practice and to disbar them . . . to fix the qualifications of those to be admitted . . . and to define what constitutes the practice of law." (Citations omitted; internal quotation marks omitted.) Id., 553-54. Moreover, "a comprehensive disciplinary scheme has been established to safeguard the administration of justice, and designed to preserve public confidence in the system and to protect the public and the court from unfit practitioners. . . . General Statutes § 51-90g and the parallel rules of practice authorize the grievance committee to act as an arm of the court in fulfilling this responsibility. . . . These rules exist within the broader framework of the relationship between attorneys and the judiciary. . . . This unique position as officers and commissioners of the court . . . casts attorneys in a special relationship with the judiciary and subjects them to its discipline." (Citations omitted; internal quotation marks omitted.) Id., 554.

Consequently, "the proceeding to disbar . . . an attorney is neither a civil action nor a criminal proceeding, but is a proceeding sui generis, the object of which is not the punishment of the offender, but the protection of the court. . . . Once the complaint is made, the court controls the situation and procedure, in its discretion, as the

interests of justice may seem to it to require. . . . The power of the courts is left unfettered to act as situations, as they may arise, may seem to require, for efficient discipline of misconduct and the purging of the bar from the taint of unfit membership. Such statutes as ours are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct." (Internal quotation marks omitted.) *Doe* v. *Statewide Grievance Committee*, 240 Conn. 671, 678, 694 A.2d 1218 (1997).

In *In re Peck*, 88 Conn. 447, 449, 91 A. 274 (1914), an attorney challenged the order of the trial court disbarring him for his conduct during the course of the settlement of an estate. This court began its review of the attorney's claims by explaining that an action seeking disbarment is neither a criminal nor civil action, but rather an inquiry that "is directed solely to [the attorney's] continued fitness." Id., 452. In this way, this court explained, notwithstanding the specific procedures of the grievance committee, the trial court, in an attorney disciplinary proceeding, "controls the situation and procedure . . . as the interests of justice may seem to it to require. It may even act upon its own motion without complaint, and *thus be the initiator of proceedings*." (Emphasis added.) Id.

In addition, the attorney in *In re Peck* challenged the authority of the trial court to hear the complaint against him, claiming that the passage of the statutes creating the statewide grievance committee gave the grievance committee the exclusive right to investigate allegations of attorney misconduct. Id., 456. In response to this claim, this court concluded that it was "apparent that the statute [creating the statewide grievance committee] did not intend to provide an exclusive mode of instituting inquiries into the conduct of attorneys. . . . Neither by

expression nor by implication does it contain a restriction of the right of complaint to these committees, or a prohibition to the courts of the right to entertain complaints not thus presented. Such an apparent invasion of the power inherent in courts to supervise the conduct of their own officers is not to be presumed, and the provisions of the statute give no countenance to the existence of a legislative intention to that end." Id., 456-57. Thus, in *In re Peck*, this court rejected the claim that the statewide grievance committee had the sole means of investigating and determining attorney misconduct. Accord *Grievance Committee* v. *Goldfarb*, 9 Conn. App. 464, 474-75, 519 A.2d 624, cert. denied, 203 Conn. 802, 522 A.2d 292 (1987) ("it is apparent that the rules of court [delegating authority to grievance committee to investigate attorney misconduct] do not provide exclusive methods for conducting attorney discipline proceedings in the Superior Court").[33]

We conclude that the reasoning employed in *In re Peck* applies equally to the plaintiff's claim in the present case. Here, after receiving information that the plaintiff may not have been authorized to bring the underlying claim in the name of some of the purported plaintiffs, the trial court, sua sponte, initiated an inquiry into the conduct of the plaintiff. As the court noted in its memorandum of decision, the trial court "availed itself

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[33] The Appellate Court also explained that "grievance committees (now grievance panels) obviously perform a necessary and valuable function by providing the courts with able and competent experts to investigate and evaluate claims of attorney misconduct. This delegation of power, however, is not a deprivation of power. The Superior Court retains inherent and plenary power to regulate and discipline its officers." *Grievance Committee* v. *Goldfarb*, supra, 9 Conn. App. 477. We find this reasoning persuasive and adopt it in the present case.

of its seldom used power, acting on its own motion, without a complaint, and thus became the initiator of the proceedings." Because a complaint before the statewide grievance committee is not the exclusive method of investigating attorney misconduct, the trial court properly initiated disciplinary proceedings against the plaintiff.

Our conclusion that the statewide grievance committee is not the exclusive tribunal in which attorney misconduct claims may be investigated is further supported by Practice Book § 2-44.[34] That section allows the Superior Court, for just cause, to suspend or disbar attorneys. Moreover, Practice Book § 2-45[35] provides in relevant part that "without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction." These rules of practice impliedly contemplate the trial court's inherent authority to discipline an attorney who commits misconduct in its presence. Thus, we reject the plaintiff's claim that the exclusive method of disciplining attorneys is by filing a formal written complaint with the grievance committee.

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[34] See footnote 28 of this opinion.

[35] Practice Book § 2-45 provides: "If such cause occurs in the actual presence of the court, the order may be summary, and without complaint or hearing; but a record shall be made of such order, reciting the ground thereof. Without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction."

III

The plaintiff next claims that her due process rights were violated by the trial court's display of actual bias toward her during the underlying proceedings. Specifically, the plaintiff points to several instances that she claims reveals the trial court's bias. The plaintiff claims that the trial court: (1) manifested its bias toward her in its July 17, 2001 memorandum of decision when it found that she represents people who challenge land use decisions;[36] (2) falsely accused her of having filed a complaint against the trial court with the judicial review council; (3) prejudged the issues against her before the presentation of evidence; (4) influenced and slanted against the plaintiff the testimony of the purported plaintiffs in the underlying case; and (5) unduly restricted the permissible scope of questioning. All of the plaintiff's contentions are without merit.

Canon 3 (c) (1) of the Code of Judicial Conduct provides in relevant part: "A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (A) the judge has a

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[36] As previously noted, in its July 17, 2001 memorandum of decision, the trial court found that the plaintiff's conduct during the underlying litigation constituted a conflict of interest. In explaining this conflict, the trial court noted: "The court is aware from its period of judicial service, that [the plaintiff] is recognized as having attained a level of success in forestalling, curtailing and delaying certain land development projects in our state. In this case, [the plaintiff] identified wetlands and natural features of the subdivision terrain which she believed ought to be protected. The Sullivans evinced no concern over these and only the Hunters were concerned over the pond. Thus, [the plaintiff] exploited her clients' mild concerns for protection of the environment to promote her own personal environmental value preferences."

personal bias or prejudice concerning a party . . . ." "To prevail on its claim of a violation of this canon, the plaintiff need not show actual bias. The plaintiff has met [her] burden if [she] can prove that the conduct in question gave rise to a reasonable appearance of impropriety." *Abington Ltd. Partnership* v. *Heublein*, 246 Conn. 815, 819-20, 717 A.2d 1232 (1998).

"We use an objective rather than a subjective standard in deciding whether there has been a violation of canon 3 (c) (1). Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety . . . that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard . . . . The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his . . . impartiality, on the basis of all of the circumstances." (Internal quotation marks omitted.) Id., 82[illegible]; see also *Papa* v. *New Haven Federation of Teachers*, 186 Conn. 725, 745-46, 444 A.2d 196 (1982). "Even in the absence of actual bias, a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned, because the appearance and the existence of impartiality are both essential elements of a fair exercise of judicial authority." (Internal quotation marks omitted.) *State* v. *Webb*, 238 Conn. 389, 460-61, 680 A.2d 147 (1996).

We first address the plaintiff's claim that the trial court's personal bias against her was revealed in its July 17, 2001 memorandum of decision. See footnote 36 of this opinion. The trial court's statement that the plaintiff

had attained a level of success in "forestalling, curtailing and delaying certain land development projects" was made in the context of its finding that the plaintiff's conduct in the underlying litigation constituted a conflict of interest. In the underlying proceedings, Joseph Sullivan testified that his sole purpose in the litigation was to stop the use of the rock crusher, *not* to stop the development from occurring. In the complaint seeking declaratory and injunctive relief, however, the plaintiff claimed that the actions of the defendants in the underlying case were causing "great and irreversible damage to the inland wetlands and watercourses" of the state and should halt until further permits were acquired. Accordingly, by pointing out that the plaintiff was well-known for her prior success in delaying development projects, the trial court was not revealing any personal bias against the plaintiff, but rather was explaining the apparent conflict of interest between the plaintiff's goals and those of her clients. Thus, we conclude that the trial court's comments do not reflect actual bias and do not raise a reasonable question of impartiality.

The plaintiff next claims that the trial court falsely accused her of filing a complaint against him before the judicial review council, thereby revealing the trial court's personal bias against her. The following facts are relevant to this claim. On October 31, 2000, the plaintiff, allegedly representing the purported plaintiffs in the underlying action, moved to disqualify the trial court, claiming that the court's order of sanctions for the plaintiff's failure to appear at the September 28, 2000 hearing manifested a personal bias against her. During a scheduled hearing on the same day that the motion was filed, the trial court heard arguments from both the plaintiff and counsel for the defendants in the underlying case regarding the motion to disqualify. The plaintiff argued

that the sanction was improper and unconstitutional because she was attending jury selection for another client on the day she failed to appear for the hearing. Additionally, the plaintiff, in support of her motion to disqualify the trial court, claimed that the trial court had had an ex parte communication with the plaintiff's opposing counsel in a prior case. [37] In response, the trial court denied that he had had any ex parte communication; additionally, when denying the plaintiff's allegation, the trial court stated its belief that the plaintiff had

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[37] During oral argument on the plaintiff's motion to disqualify the trial court, the following colloquy between the plaintiff and the trial court occurred:

> "[The Plaintiff]: Your Honor, this motion is not interposed to frustrate these proceedings. It's simply to protect the proceedings from what seems to be inappropriate sanctioning conduct by this court for exercise [of] the first amendment rights and liberties by the plaintiffs in this case to chill them in the future . . . to chill my rights and to single me out for very special treatment in this court which I'm very well aware of Your Honor.
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> "And therefore, this motion . . . has been characterized by the defendants; and it of course is no surprise that they are very, very generous in their compliments to the court and appealing to Your Honor's . . . sense of good relations with them, Your Honor, because after all they did win quite a favorable decision from Your Honor in this case. So, it really shouldn't be any surprise that they should sound so, if you'll forgive me, obsequious. . . .
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> "The Court: . . . I must say . . . while I would intend to agree with you that it is. Perhaps [sycophantic] might be the appropriate word for [defense counsel] to have complimented the court as he did, nevertheless, I think it borders on the unprofessional for you to engage in these type of remarks. I really do. I think it borders on unprofessional and I resent them.
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> "[The Plaintiff]: My remarks, Your Honor, in all respect are based on an appreciation and sensitivity to the constitutional rights of litigants including the plaintiffs; including mine . . . and all those who come to our courts to adjudicate disputes, including those involving town authorities where there is a dispute as to

filed a complaint in the judicial review council as a result of the alleged communication and that it was dismissed as being without merit. In fact, the plaintiff had not, in that prior case, filed a grievance against the trial court, but had filed a complaint with the grievance committee against her opposing counsel as a result of the alleged ex parte communication.

Thereafter, the plaintiff, on December 21, 2000, again moved to disqualify the trial court claiming that because she never in actuality had filed a complaint against the trial court, the allegation that she had done so revealed the trial court's personal bias against her. In response to that motion, the trial court corrected itself, stating that it had been wrong when it stated its belief that the plaintiff had filed a complaint against him. Moreover, it apologized to the plaintiff for its "faulty memory."[38]

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whether they give due heed to their rules and regulations. There's nothing I have said to justify the comment Your Honor just made, which simply magnifies the reason why it was necessary for me to file this motion to disqualify.

"I will add something and Your Honor is aware that some time ago in Danbury Your Honor engaged in an ex parte communication with [another attorney] . . . and that was a case involving—

"The Court: Well please . . . would you please tell me—first of all I stoutly deny it. In fact, I think you even filed a complaint with [the] judicial review council on that and it was dismissed as being un-meritorious and well it should have been because it was not an ex parte conversation; and you and I had quite a discussion on the record over that very issue. That . . . took place nine or ten years ago. What in heaven's name does it have to do with today's proceeding?

"[The Plaintiff]: A great deal, Your Honor because it was—

"The Court: Well I'm ordering you to go on to something else. So it will have nothing to do with it."

[38] Specifically, the trial court stated: "And the purpose for which she [filed a motion to disqualify], so that there be no question

Upon our thorough review of the record, we conclude that the trial court's statements do not reflect any actual bias against the plaintiff; nor do they raise a reasonable question concerning the court's impartiality. Rather, it appears to us that the trial court's recollection as to the entity and persons involved in the plaintiff's grievance simply was mistaken. As the trial court noted, the allegation, raised by the plaintiff in oral argument before the trial court, that the trial court had engaged in an ex parte communication was in reference to an incident that had occurred ten years prior to the hearing in the present action and involved a completely different case. Additionally, the trial court promptly corrected the record with respect to its statement that the plaintiff had filed a complaint against it and apologized to the plaintiff for its mistake. Thus, we conclude that the statement by the trial court was due merely to a mistaken recollection of a prior case and does not reflect any bias against the plaintiff.

The plaintiff next claims that the trial court was biased against her in that it prejudged the issues prior to the presentation of evidence. In the present case, the trial court advised the purported plaintiffs, who had been subpoenaed to the court to testify regarding whether the plaintiff was authorized to bring the underlying case, that they would be subject to cross-examination and could request an attorney to be present at any time. This statement by the trial court, the plaintiff claims, indi-

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about it, was to prove to the court that the court was wrong when the court tried to recollect ten years ago that particular incident that she accused the court of engaging in an ex-parte conversation with [another attorney] in which I clearly said, because I did review the transcript, I clearly said that I believed that [the plaintiff] had filed a complaint with the judicial review council over that. In fact the court was wrong on that. The court's recollection was faulty, and to that extent I apologize to [the plaintiff] for my faulty memory."

cates that the trial court already had decided that the plaintiff was not in fact the attorney for the purported plaintiffs in the underlying case and, therefore, had already prejudged the issue before it.

We note that the specific issue to be determined by the trial court was not whether the plaintiff was the *attorney* for the purported plaintiffs in the underlying case, but whether she was *authorized* to bring an action for declaratory and injunctive relief. Put differently, even if we assume the trial court believed that the purported plaintiffs were not represented by the plaintiff when they were subpoenaed to the court, this belief had no bearing on the issue before the court, namely, whether, *at the time the case was brought*, the plaintiff was authorized to include their names as plaintiffs in an action seeking declaratory and injunctive relief. Moreover, the trial court's instruction to the witnesses that they would be subject to cross-examination and could request that an attorney other than the plaintiff be present was proper because it was in fact the *plaintiff* who would be cross-examining them; thus, if the plaintiff was in fact still retained by the witnesses, they might not have realized that they could request an attorney *other than* the plaintiff. Accordingly, our review of the record reveals that the actions of the trial court in advising the witnesses that they could have an attorney present did not reflect bias by the court and does not raise a reasonable question of impartiality.[39]

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[39] The plaintiff also claims that the statement by the trial court that all the names of the purported plaintiffs should be withdrawn from the case revealed that it had prejudged the issue before it, thereby revealing a personal bias against the plaintiff. Specifically, in response to a request by counsel for the defendants in the underlying case to remove the name of one of the purported plaintiffs from the complaint, the trial court stated: "Well, just like everybody's name

The plaintiff next claims that the trial court influenced and slanted against her the testimony of the plaintiffs in the underlying case, thereby revealing the trial court's bias against her. To support this claim, the plaintiff extracts from the transcript isolated statements and questions by the trial court that, she claims, reveal its bias against her. Thus, the plaintiff claims that the trial court improperly characterized the sign-up sheet signed by the plaintiffs at the December 22, 1999 meeting as a petition rather than as a listing of coplaintiffs. As a result, the plaintiff contends, subsequent witnesses testified that they believed that they were simply signing a petition in support of the Sullivans. The evidence on which the plaintiff relies is the court's order that the sign-up sheet be made a court exhibit.

After a thorough review of the record, we conclude that the trial court's characterization of the sign-up sheet as a petition does not reveal bias against the plaintiff. Rather, the trial court likely used the word petition in the generic sense as a synonym for a sign-up sheet and did not intend to influence subsequent witnesses into testifying that they believed it was a petition rather than an authorization to bring an action. Thus, the court's remark characterizing the sign-up sheet as a petition does not reflect any bias against the plaintiff.

Finally, the plaintiff contends that the trial court's bias against her was revealed when it "severely limited the scope of questions" the plaintiff was permitted to ask the

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should be removed forthwith." First, we note that this was one isolated remark in proceedings that took place over the course of several months. Second, the court's statement likely was referring solely to the testimony of three witnesses who had testified that day that the plaintiff was not authorized to bring an action in their names seeking declaratory and injunctive relief. Viewing the remark in this context, we conclude that it does not reveal any bias against the plaintiff, nor does it raise a reasonable question as to the trial court's impartiality.

witnesses.[40] The plaintiff, however, did not raise any evidentiary claims; rather her contention is that the trial court's personal bias against her was reflected in its limitation of the scope of questions that she was allowed to ask. The limitation on the scope of questions, in our view, did not reveal bias, but merely was intended to limit the line of questioning to the issues articulated by the trial court, namely, whether the plaintiff was authorized to bring the action seeking declaratory and injunctive relief in the names of the purported plaintiffs, whether she continued activity in the case after she was told that certain purported plaintiffs wanted to withdraw and whether her conduct constituted a conflict of interest. Accordingly, upon thorough review of the record, we conclude that the trial court's actions in limiting the permissible scope of questioning does not reflect any actual bias toward the plaintiff, nor does it raise a reasonable question concerning its impartiality.

IV

The plaintiff's next claim is that the trial court improperly concluded that she had engaged in professional misconduct. Specifically, the plaintiff claims that her conduct during the course of the underlying proceedings accorded with the applicable standards of pro-

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[40] Specifically, the plaintiff claims that she was not permitted to ask whether the witnesses would be willing to withdraw from the underlying litigation if there might be adverse ramifications as a result, whether the Sullivans had asked other witnesses to join the action seeking declaratory and injunctive relief, whether the witnesses received a copy of the plaintiff's motion to withdraw her appearance, whether there was a "question and answer" period at the December 22, 1999 meeting, and what environmental issues were discussed at that meeting.

fessional conduct. The trial court contends in response that it properly determined that the plaintiff had engaged in multiple acts of misconduct. We agree with the trial court.

We cull from the plaintiff's brief that she claims that the evidence was insufficient to support the trial court's findings that she had violated several rules of professional misconduct. Accordingly, as a preliminary matter, we set forth the standard of review for the plaintiff's claims of evidentiary insufficiency. "Where the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous." (Internal quotation marks omitted.) *State* v. *Floyd*, 253 Conn. 700, 737, 756 A.2d 799 (2000). "We also must determine whether those facts correctly found are, as a matter of law, sufficient to support the judgment." *Briggs* v. *McWeeny*, supra, 260 Conn. 322. "Although we give great deference to the findings of the trial court because of its function to weigh and interpret the evidence before it and to pass upon the credibility of witnesses . . . we will not uphold a factual determination if we are left with the definite and firm conviction that a mistake has been made." (Citation omitted; internal quotation marks omitted.) Id. "Additionally, because the applicable standard of proof for determining whether an attorney has violated the Rules of Professional Conduct is clear and convincing evidence . . . we must consider whether the trial court's decision was based on clear and convincing evidence." (Citation omitted.) Id., 322-23.

The trial court concluded that the plaintiff's misconduct involved five specific areas; namely, unauthorized representation of clients, conflict of interest, misrepre-

sentations made to the court, conduct toward the court, and incompetence as an attorney. We address each in turn.

A

The trial court's finding that the plaintiff was not authorized to bring the action seeking declaratory and injunctive relief on behalf of the purported plaintiffs, with the exception of the Sullivans and the Hunters, was based on its determination that the plaintiff, during the course of that litigation, had violated several Rules of Professional Conduct. The trial court first concluded that the plaintiff had violated rule 1.5(b), which provides in relevant part: "When the lawyer has not regularly represented the client, the basis or rate of the fee, whether and to what extent the client will be responsible for any court costs and expenses of litigation, and the scope of the matter to be undertaken shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. . . ." As the trial court noted in its memorandum of decision, although the plaintiff assured the attendees of the December 22, 1999 meeting that the Sullivans were assuming all the expenses of litigation, that oral representation does not replace the rule's requirement of a written communication from the attorney to the clients regarding, inter alia, the scope of the representation. Moreover, before this court, the plaintiff conceded that she did not have written retainer agreements with all twenty-two plaintiffs listed in the complaint. We agree with the trial court that the oral representations made at the December 22, 1999 meeting and the communications from Joseph Sullivan do not satisfy the rule's requirement that attorneys submit a written communication to their clients regarding

the costs of litigation and the scope of representation. Thus, the trial court properly concluded that the plaintiff violated rule 1.5(b) of the Rules of Professional Conduct.

The trial court next found that the plaintiff had violated rule 1.7 (b)(2) of the Rules of Professional Conduct. Rule 1.7(b) provides in relevant part: "A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless . . . (2) the client consents after consultation. *When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.*" (Emphasis added.) In the present case, the trial court concluded that there had been no consultation with the purported plaintiffs in the underlying case concerning the implications and risks of multiple representation. In support for this determination, the trial court credited the testimony of several witnesses who testified that the plaintiff had failed to explain either that each purported plaintiff potentially could be liable for taxable costs or whether the purported plaintiffs would be able to seek indemnification from the Sullivans, in the event that those costs were assessed. The trial court concluded, moreover, that the plaintiff had failed to explain the potential for conflict among the plaintiffs in the underlying action that could arise because certain plaintiffs were concerned about different aspects of the subdivision development.[41]

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[41] For instance, as the trial court noted, the Sullivans primarily were concerned with the use of the rock crusher, the Hunters were concerned with their rights to a pond that was near their property, and Jule Toma was concerned with air quality.

It is within the province of the trial court, when sitting as the fact finder, "to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Internal quotation marks omitted.) *Potter* v. *Chicago Pneumatic Tool Co.*, 241 Conn. 199, 224, 694 A.2d 1319 (1997). "Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude. . . . An appellate court must defer to the trier of fact's assessment of credibility because it is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom. . . . As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record." (Internal quotation marks omitted.) *Briggs* v. *McWeeny*, supra, 260 Conn. 327. Accordingly, we defer to the trial court's credibility assessments and conclude that there was ample evidence in the record to support the trial court's conclusion that the plaintiff had failed to explain the implications of multiple representation to the purported plaintiffs.

Finally, the trial court concluded that the plaintiff was not authorized to represent eighteen of the twenty-two purported plaintiffs in the underlying litigation because the plaintiff violated rule 1.4 of the Rules of Professional Conduct, which provides in relevant part: "(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Specifically, the trial court credited the tes-

timony of the witnesses who testified that they did not understand that, by signing the sign-up sheet circulated at the December 22, 1999 meeting, they were authorizing the plaintiff to bring an action in their names. Additionally, the trial court found that the witnesses honestly believed that they merely were signing a petition in support of the Sullivans' attempt to enforce certain municipal regulations regarding the rock crusher. The trial court also found that the plaintiff had failed to meet personally with any of the plaintiffs in the underlying case regarding their identity or their goals in the litigation. Instead, the trial court found that the plaintiff had delegated to the Sullivans the responsibility for communicating with the purported plaintiffs. Moreover, the trial court credited the testimony of several witnesses who stated that they were unaware of their status as plaintiffs until they were subpoenaed by the defendants in the underlying action to appear to give depositions. The trial court also determined that the plaintiff had violated rule 1.4 by failing to communicate certain settlement offers[42] to the purported plaintiffs and by failing to advise other plaintiffs that the Sullivans had expressed their desire to withdraw the litigation.

We conclude that the trial court's finding of a violation of rule 1.4 is amply supported by the record. As noted previously in this opinion; see footnotes 9 and 10 of this opinion; several witnesses testified that they

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[42] In November, 2000, counsel for the defendants in the underlying action made written offers of settlement to the plaintiff, including waiver of all claims for fees and costs to which they might be entitled as prevailing parties and waiver of the $450 counsel fees awarded to each as sanctions by the trial court. The plaintiff testified that she did not send the plaintiffs in the underlying case copies of the settlement offers, nor did she communicate the offers to them.

believed they were signing a petition rather than an authorization for the plaintiff to bring an action in their names. Pursuant to rule 1.4, it is incumbent on the attorney to explain the nature of the matter to the extent necessary so that the client may make informed decisions. It is apparent from the testimony of the witnesses, which was credited by the trial court, that the plaintiff failed to explain adequately the nature of the sign-up sheet, as well as the extent to which those who signed it were authorizing the plaintiff to represent them not only in an appeal from the board, but also in an action seeking declaratory and injunctive relief. We also defer to the trial court's determination that credited the testimony of the witnesses who stated that they believed they were signing a petition rather than an authorization to bring suit, therefore resulting in the implication that the plaintiff failed to explain adequately the nature and scope of the proceedings so that her purported clients could make an informed decision regarding the representation. See *Briggs* v. *McWeeny*, supra, 260 Conn. 327.

In addition, the plaintiff herself testified that she relied on the Sullivans to communicate with other purported plaintiffs. Specifically, the plaintiff testified that it was the Sullivans who mailed copies of the summons and complaint to the purported plaintiffs in the underlying case and that the scope of the representation, including the appeal of the board's decision and the action seeking declaratory relief, was explained to the plaintiffs in the underlying case not by the plaintiff but by Joseph Sullivan, who was not a lawyer. It is clear to us, however, that an attorney may not delegate her responsibility to communicate with clients to nonlawyers, even if they are involved in the case. Accordingly, we conclude that the trial court properly found, by clear and convincing evidence, that the plaintiff had vio-

lated rules 1.5 (b),[43] 1.7 (b) (2)[44] and 1.4 of the Rules of Professional Conduct by engaging in the unauthorized representation of eighteen of the twenty- two plaintiffs in the underlying case.[45]

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[43] See footnote 13 of this opinion.

[44] See footnote 14 of this opinion.

[45] The trial court also concluded that, by continuing to file pleadings in the underlying case after the Sullivans had instructed the plaintiff to cease litigation, the plaintiff violated rules 1.2 (a) and (c) and 1.16 (a)(3). Rule 1.2(a) provides in relevant part: "A lawyer shall abide by a client's decisions concerning the objectives of the representation . . . and shall consult with the client as to the means by which they are to be pursued. . . ." Subsection (c) of that rule provides: "A lawyer may limit the objectives of the representation if the client consents after consultation." Moreover, rule 1.16(a) provides in relevant part: "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if . . . (3) the lawyer is discharged." The plaintiff claims that she did not withdraw from the litigation seeking declaratory relief even after the Sullivans had requested that she do so because she believed Joseph Sullivan was "confused" and that he was asking her to do something that would not be in his best interests.

We reject the plaintiff's contentions that the evidence does not support the trial court's determination that the plaintiff violated rule 1.2(a) and (c) and rule 1.16. It is clear from our review of the record that the trial court's findings regarding this aspect of the plaintiff's unauthorized representation of the purported plaintiffs in the underlying case were clearly and convincingly supported by the evidence. As previously noted, the Sullivans clearly expressed to the plaintiff in a letter dated July 18, 2000, and copied to the trial court, that they no longer wanted to pursue the action seeking declaratory and injunctive relief. Subsequently, however, the plaintiff moved for, among other things, a reargument of the trial court's decision dismissing counts one and two of the complaint seeking declaratory and injunctive relief. Moreover, without the permission of the Sullivans or any of the other purported plaintiffs, the plaintiff appealed to the Appellate Court from the trial court's denial of the plaintiff's motion to disqualify. The plaintiff also appealed, without permission of her clients,

B

The trial court also concluded that the plaintiff's conduct in the underlying litigation created a conflict of interest. Specifically, in addition to finding that the plaintiff had violated rule 1.7 by engaging in unauthorized representation, the trial court also concluded that the violation of rule 1.7 resulted in a conflict of interest. This finding was based predominantly on the evidence that the plaintiff continued to file pleadings in the underlying litigation after the Sullivans had communicated to her that they did not wish to continue the litigation. The trial court's finding of a conflict of interest also was supported by the plaintiff's requirement that any settlement agreement in the underlying litigation include a personal release of all costs and penalties the plaintiff might have incurred, in addition to a release of her clients.

As noted previously in this opinion, rule 1.7 of the Rules of Professional Conduct sets forth the general rule on conflicts of interest in an attorney-client relationship. Rule 1.7(a) provides that "[a] lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation." The commentary to rule 1.7 further explains the rule, stating that "the lawyer's own interests should not be permitted to have adverse effect on representation of a client. . . ." Moreover, the commentary provides that "if the probity of a lawyer's own conduct in a transaction is in serious ques-

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from the trial court's order granting the motion for sanctions by the defendants in the underlying case. On the basis of this evidence, and additional evidence in the record, we conclude that there was sufficient evidence to support the conclusion that the plaintiff had violated rules 1.2(a) and (c) and 1.16(a)(3) of the Rules of Professional Conduct.

tion, it may be difficult or impossible for the lawyer to give a client detached advice. . . ."

In the present case, the plaintiff testified that she continued to file pleadings on behalf of the Sullivans and other plaintiffs despite their instruction not to do so because they were "confused" about the legal ramifications of a withdrawal. In addition, the plaintiff has not disputed the fact that she filed an appeal of the order of sanctions against her in the Appellate Court without first consulting with her clients. In addition, the plaintiff herself testified that she would not agree to a settlement in the underlying proceedings without a release of all costs and sanctions against her personally.

On the basis of this and additional evidence in the record,[46] we conclude that there was sufficient evidence to support the conclusion that the plaintiff's conduct in the underlying litigation had resulted in a conflict of interest between the plaintiff's interest in pursuing litigation and the Sullivans' interest in ceasing it.

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[46] In particular, the trial court also determined that the plaintiff violated rule 1.8(f) of the Rules of Professional Conduct, which provides: "A lawyer shall not accept compensation for representing a client from one other than the client unless:

"(1) The client consents after consultation;

"(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

"(3) Information relating to representation of a client is protected as required by rule 1.6."

As noted previously, the trial court found, and the plaintiff does not dispute, that Diane Mellon had paid the plaintiff $1000 with the intention of joining the underlying litigation as a plaintiff. The plaintiff, after receiving this money, never notified the other plaintiffs in the underlying action of the receipt of the money, nor obtained their consent after consultation. We agree with the trial court that the plaintiff's violation of rule 1.8(f) also resulted in a conflict of interest.

C

The trial court's sanction of disbarment was also based on its conclusion that the plaintiff had made misrepresentations to the court in violation of rule 3.3(a)(1) of the Rules of Professional Conduct and had engaged in inappropriate conduct toward the court in violation of rules 8.2 and 8.4(3) and (4). Rule 3.3(a) provides in relevant part: "A lawyer shall not knowingly: (1) make a false statement of material fact or law to a tribunal . . . ." The commentary further provides: "An assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. . . ." In addition, rule 8.2(a) provides in relevant part: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge . . . ." As the commentary to the rule explains, "false statements by a lawyer can unfairly undermine public confidence in the administration of justice. . . ." Rule 8.4 sets forth specific behavior that constitutes misconduct. Thus, the rule provides that it is professional misconduct to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . [or to] engage in conduct that is prejudicial to the administration of justice . . . ." Rules of Professional Conduct 8.4(3) and (4).

The trial court's conclusion that the plaintiff had made misrepresentations to the tribunal and had engaged in inappropriate conduct toward the court is predicated on the plaintiff's unsubstantiated allegation of gender bias on the part of the court. With regard to these allegations of gender bias toward the court, we agree with the trial

court that the plaintiff's assertions were "wholly conclusory and without factual support." To begin, the plaintiff has presented no evidence establishing a factual basis for her claims. In response to the plaintiff's original allegation, the trial court, noting the seriousness of the allegations, ordered her to file an affidavit detailing her claims of bias. Subsequently, the plaintiff filed a document, titled as an affidavit,[47] claiming, inter alia: The trial court's failure to rule on the plaintiff's motion for sanctions against counsel for the defendants in the underlying case created the appearance of gender bias; the motions by opposing counsel in the underlying case to dismiss counts one and two of the complaint seeking declaratory and injunctive relief were without merit, and their granting evidenced the court's gender bias; female plaintiffs in the underlying action commented to the plaintiff about the preferential treatment of the male attorneys and defendants; and the imposition of the trial court's sanction for failing to appear at the scheduled September 28, 2000 hearing was a "manifestation of an extraordinary vindictiveness on the part of [the trial court]" and represented gender discrimination.[48]

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[47] The trial court explained that the document filed by the plaintiff was not, in actuality, an affidavit because the contents were not sworn to and did not satisfy the requirements of a proper affidavit.

[48] The plaintiff's purported November 6, 2000 affidavit provides in full: "I, Nancy Burton, do hereby depose as follows:

"1. I am above the age of eighteen years and I believe in the obligation of an oath.

"2. This affidavit is submitted pursuant to order of the trial court (Mottolese, J.) entered on October 31, 2000.

"3. I am aware of conduct at the Bridgeport Superior Court by ~~Hon.~~ William A. Mottolese and others which gives the appearance of gender bias.

(*footnote continued*)

"Gender bias, particularly bias based on stereotypes, has no place in the courtroom." (Internal quotation

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"4. For example, on October 25, 2000, Attorney Juda J. Epstein, in the company of Attorney Gregory M. Conte, made the following utterance in a booming voice as he approached Courtroom 5D from the elevator: 'FUCK YOU, BITCH!'

"5. Mr. Epstein's utterance was preceded by a reference to depositions. Mr. Epstein had noticed certain depositions in this case, with respect to which I had filed a motion for continuance.

"6. Mr. Epstein's utterance may have been directed at myself or some other female person.

"7. That Mr. Epstein should conduct himself in such a manner within the Bridgeport Superior Courthouse suggests an awareness on his part that such conduct is acceptable at the Bridgeport Superior Court.

"8. When I called attention to Mr. Epstein's utterance to Hon. John W. Moran shortly thereafter, and moved that Mr. Epstein be sanctioned, neither Mr. Epstein nor Mr. Conte denied that the former made the loud utterance and Judge Moran made no inquiry and did nothing. Present in the courtroom were a clerk, a court reporter and a deputy sheriff, as I recall.

"9. I filed a written motion for sanctions addressed to Mr. Epstein's utterance. A copy is attached hereto.

"10. On October 31, 2000, Judge Mottolese, who said he was familiar with all the motions for sanctions in the file, which at that time included the motion for sanctions I filed concerning Mr. Epstein's utterance, ordered that a hearing be conducted on all motions for sanctions other than the motion for sanctions addressed to Mr. Epstein's utterance and a separate motion for sanctions I filed concerning Mr. Conte.

"11. Such restricted order strongly suggests Judge Mottolese's reluctance to consider sanctioning Mr. Epstein for his utterance, which was offensive and degrading to women.

"12. The effect of such restricted order was to postpone indefinitely any consideration by any Judge of the Superior Court of Mr. Epstein's offensive utterance.

"13. By indefinitely postponing consideration of such motion, Judge Mottolese created the appearance of gender bias and in fact

marks omitted.) *State* v. *Figueroa*, 235 Conn. 145, 185, 665 A.2d 63 (1995). "Of all the charges that might be

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promoted gender bias by permitting Mr. Epstein to go unsanctioned for an indefinite period.

"14. I am aware of other conduct by Judge Mottolese and others at the Bridgeport Superior Court which gives the appearance of gender bias.

"15. During proceedings in the above-captioned case, Judge Mottolese accorded preferential treatment to the defendants, males, and their attorneys, males.

"16. Both Lenore A. Sullivan and Patricia Hunter, plaintiffs herein, who are women, commented to me about such preferential treatment and their disdain for what appeared to be a judicial attitude that was gender-biased against them and their attorney, a woman.

"17. The plaintiffs established by overwhelming evidence that the motions to dismiss counts 1 and 2 of the complaint were without merit; Judge Mottolese's dismissal of counts 1 and 2 manifested bias and prejudice against Ms. Sullivan and Ms. Hunter because such decision completely discredited their testimony in favor of testimony by male witnesses which was not credible and, even if credible, was insufficient to support dismissal of counts 1 and 2. Such bias and prejudice may manifest gender bias.

"18. On October 31, 2000, Judge Mottolese imposed a $ 1,000 monetary penalty upon myself for failing to appear at a scheduled September 28, 2000 proceeding for which I had properly sought a continuance given a serious scheduling conflict, namely, my participation in jury selection in the case of *Joseph W. Coniglio* v. *David W. White*, CV 96 0324807, at the Superior Court, Judicial District of Danbury. Such penalty is a clear violation of Mr. White's Constitutional right to have counsel present during jury selection, a right inviolate. See Connecticut Constitution, Article First, Section 19 ('The right to question each juror individually by counsel shall be inviolate.') Judge Mottolese was fully aware of the conflict. Judge Mottolese's sanction, which is the subject of a pending petition for direct appeal to the Supreme Court, is a manifestation of an extraordinary vindictiveness on the part of Judge Mottolese, an expression of contempt for the rights of Mr. White

leveled against one sworn to administer justice and to faithfully and impartially discharge and perform all the duties incumbent upon me . . . a charge of bias must be deemed at or near the very top in seriousness, for bias kills the very soul of judging—fairness." (Internal quotation marks omitted.) *Wendt* v. *Wendt*, 59 Conn. App. 656, 693, 757 A.2d 1225, cert. denied, 255 Conn. 918, 763 A.2d 1044 (2000). In addition, "it is the province of the trier of fact to weigh the evidence presented and determine the credibility and effect to be given the evidence." *Potter* v. *Chicago Pneumatic Tool Co.*, supra, 241 Conn. 224.

Although any bias, including that based on gender or stereotypes, cannot be tolerated, we conclude that the plaintiff has failed to provide any support for her allegation of gender bias by the trial court. Upon close review of the purported affidavit, it is apparent to us that it contains allegations that simply are unsupported by any facts or evidence. These unsupported allegations, in our view, do not give rise to an objective, reasonable belief that the assertions were true. To the contrary, as the trial court noted, and we find persuasive, the plaintiff's allegations arose only after the trial court adjudicated the underlying case in the defendants' favor and after the court imposed sanctions against her for failing to appear at a scheduled hearing. Moreover, the plaintiff utilizes the rulings that were adverse to her case as *evi-*

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and myself and the rights of plaintiffs herein, a shocking disregard for the sanctity of the jury process and cannot be understood apart from a consideration of gender discrimination, which I believe it also represents.

"19. This affidavit does not represent an exhaustive account of instances of gender bias by Judge Mottolese and others at the Bridgeport Superior Court.

"20. I swear to this affidavit under penalty of perjury."

dence of gender bias of the court. It is clear to us, however, that adverse rulings do not amount to evidence of bias. See *State* v. *Fullwood*, 194 Conn. 573, 582, 484 A.2d 435 (1984) ("adverse rulings do not themselves constitute evidence of bias").

In addition, the trial court found that the plaintiff knowingly misrepresented to the court in the affidavit that Lenore Sullivan and Patricia S. Hunter had commented on the preferential treatment the males involved in the underlying case were receiving. In fact, Lenore Sullivan testified that she never discussed gender bias by the court with the plaintiff and that she did *not* believe the court treated anyone differently on the basis of their gender. In response to this testimony, the court inquired of the plaintiff, while she was testifying on her own behalf, regarding the affidavit and whether Lenore Sullivan had in fact alleged that the trial court engaged in gender bias.

As the trial court noted, the plaintiff never fully answered the trial court's inquiry regarding the plaintiff's statement, both in her affidavit and in open court, that Lenore Sullivan had complained of gender bias by the court. For instance, the plaintiff explained that "many comments were made" by Lenore Sullivan as to how the case was proceeding. The plaintiff testified, moreover, that she would not say that Lenore Sullivan had "lied" to the court when she denied making the statement but that her testimony was "not consistent with . . . what was said . . . ." The plaintiff also asserted that Lenore Sullivan was put in "an unfair position" by being asked that question by the court. Further, the plaintiff could not remember specific comments made by Lenore Sullivan but that there were "several occasions when we very clearly discussed the topic" of gender discrimination. After further questioning, the plaintiff con-

ceded that she did not remember a specific statement being made, but that both Lenore Sullivan and Patricia S. Hunter had communicated to her that they did not think the underlying proceedings were "fair," and that their opinions related to gender bias, in the plaintiff's view, because it was the "undercurrent of what [they] were discussing."

As a result of the plaintiff's testimony, the trial court, in its memorandum of decision, concluded that, because the plaintiff responded to the court's questioning by "evading the answer with misleading statements concerning her many discussions with [Lenore] Sullivan," the trial court was at liberty to accept the testimony of Lenore Sullivan as the truth. Put differently, the trial court credited the testimony of Lenore Sullivan denying that she had ever made allegations of gender bias against the court, over the testimony of the plaintiff.

With these principles in mind, and after a thorough review of the record, we conclude that the trial court's determination that the plaintiff misrepresented a material fact to the tribunal was not clearly erroneous. The trial court concluded, after hearing all the evidence, that the plaintiff knowingly had attributed to Lenore Sullivan a statement regarding gender bias that Lenore Sullivan testified she did not make. We will not disturb the trial court's credibility assessment; accordingly, we conclude that the trial court reasonably could have concluded that the plaintiff violated rule 3.3(a)(1).

Moreover, these misrepresentations by the plaintiff further support our conclusion that the plaintiff's claims of gender bias were based, not on a bona fide claim of prejudice, but instead were a result of adverse trial court rulings. On this record, the trial court reasonably could have concluded that the plaintiff's claims of bias were meritless, and her allegations of gender bias against the

court were either knowingly false or made with "reckless disregard as to its truth or falsity." See rule 8.2(a) of the Rules of Professional Conduct. Accordingly, the trial court reasonably could have concluded that the plaintiff violated rules 8.2 and 8.4(3) and (4). See *Office of Disciplinary Counsel* v. *Price*, 557 Pa. 166, 177-78, 732 A.2d 599 (1999) (upholding sanctions against attorney whose allegations against judge were "either knowingly false or made without an objective reasonable belief that they were true" and constituted "misconduct prejudicial to the administration of justice").

D

Finally, the trial court concluded that the plaintiff's professional performance during the course of the underlying proceedings fell below the acceptable standard of competence envisioned by rule 1.1 of the Rules of Professional Conduct, which provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Further, the commentary to the rule clarifies the relevant factors to be utilized when an attorney's competence is questioned. "In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. . . ." Rules of Professional Conduct 1.1, commentary.

In concluding that the plaintiff lacked competence to practice law, the trial court determined that the plaintiff lacked a basic knowledge of the rules of practice and procedure. For support for this lack of knowledge, the trial court cited several examples: the numerous motions to disqualify that the plaintiff filed with the court that did not meet the requirements of Practice Book § 1-23;[49] her oral motions to disqualify; the lack of compliance with certain formalities when the plaintiff drafted and filed her affidavits; her failure to cease speaking, either as an attorney or when the plaintiff was testifying in her own behalf, when an objection was made; and the plaintiff's taking exception to the court's order that she answer certain questions when the necessity of taking an exception was eliminated from the rules of practice.

Upon our thorough review of the record, and in light of our earlier conclusions regarding the plaintiff's misconduct, we conclude that there was sufficient evidence upon which the trial court could have concluded by clear and convincing evidence that the plaintiff had violated rule 1.1. We further conclude that the facts found by the trial court are, as a matter of law, sufficient to support its finding that the plaintiff committed professional misconduct.

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[49] Practice Book § 1-23 provides: "A motion to disqualify a judicial authority shall be in writing and shall be accompanied by an affidavit setting forth the facts relied upon to show the grounds for disqualification and a certificate of the counsel of record that the motion is made in good faith. The motion shall be filed no less than ten days before the time the case is called for trial or hearing, unless good cause is shown for failure to file within such time."

V

Last, we address the plaintiff's claim that because her conduct was in compliance with the Rules of Professional Conduct, the trial court improperly disbarred her. The trial court contends that it reasonably concluded that the sanction of disbarment was warranted. In light of our earlier conclusion that the trial court reasonably could have concluded that the plaintiff committed numerous acts of misconduct, we will consider whether the sanction of disbarment was disproportionate to the violations found. We conclude that the trial court did not abuse its discretion when it disbarred the plaintiff from the practice of law.

As we previously have noted, "[a] court disciplining an attorney does so not to punish the attorney, but rather to safeguard the administration of justice and to protect the public from the misconduct or unfitness of those who are members of the legal profession." (Internal quotation marks omitted.) *Thalheim* v. *Greenwich*, supra, 256 Conn. 655. Thus, "[a] court is free to determine in each case, as may seem best in light of the entire record before it, whether a sanction is appropriate and, if so, what the sanction should be." (Internal quotation marks omitted.) Id., 656. "As with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did. . . . Therefore, whether this court would have imposed a different sanction for [the plaintiff] is irrelevant. . . . Rather, we must determine whether the trial court abused its discretion in concluding that the appropriate sanction"; (citations omitted; internal quotation marks omitted) id.; for the plaintiff was disbarment.

"An attorney as an officer of the court in the administration of justice, is continually accountable to it for the manner in which she exercises the privilege which has been accorded [her]. [Her] admission is upon the implied condition that [her] continued enjoyment of the right conferred is dependent upon [her] remaining a fit and safe person to exercise it, so that when she, by misconduct in any capacity, discloses that she has become or is an unfit or unsafe person to be entrusted with the responsibilities and obligations of an attorney, [her] right to continue in the enjoyment of [her] professional privilege may and ought to be declared forfeited. . . . Therefore, if a court disciplines an attorney, it does so not to mete out punishment to an offender, but [so] that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession." (Citation omitted; internal quotation marks omitted.) *Massameno* v. *Statewide Grievance Committee*, supra, 234 Conn. 554-55.

In sanctioning the plaintiff, the trial court was guided by the American Bar Association's Standards for Imposing Lawyer Sanctions (Standards).[50] The Standards provide that, after a finding of misconduct, a court should consider: (1) the nature of the duty violated; (2) the attorney's mental state; (3) the potential or actual injury stemming from the attorney's misconduct; and (4) the existence of aggravating or mitigating factors. A.B.A., Standards for Imposing Lawyer Sanctions (1986) stan-

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[50] We note that, although the trial court was guided by the Standards, "the Standards, originally promulgated in 1986, have not formally been adopted by the judges of this state." (Internal quotation marks omitted.) *Statewide Grievance Committee* v. *Spirer*, 247 Conn. 762, 782 n.13, 725 A.2d 948 (1999).

dard 3.0, p. 25; see also *Briggs* v. *McWeeny*, supra, 260 Conn. 333-34. The Standards list the following as aggravating factors: "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; [and] (j) indifference to making restitution." A.B.A., Standards for Imposing Lawyer Sanctions, (1986) standard 9.22, p. 49. The Standards list the following as mitigating factors: "(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (g) character or reputation; (h) physical or mental disability or impairment; (i) delay in disciplinary proceedings; (j) interim rehabilitation; (k) imposition of other penalties or sanctions; (l) remorse; [and] (m) remoteness of prior offenses." Id., standard 9.32, p. 50.

In considering the nature of the duty violated, the trial court found that the plaintiff, by committing several acts of misconduct, had violated the duty to her clients, the public, the legal system and the profession. The trial court additionally found, with regard to the plaintiff's mental state, that the plaintiff's misconduct was wilful and "performed with full knowledge of the circumstances and consequences." Regarding the factor involving the injury caused by the misconduct, the trial court

noted that the plaintiff's misconduct caused direct monetary loss to one plaintiff in the underlying case who incurred legal expenses in retaining another lawyer. The trial court further determined, however, that the plaintiff's misconduct caused intangible injury to the Sullivans and the other purported plaintiffs who were subpoenaed to court to testify regarding the plaintiff's authorization to bring an action. The trial court also found that the misconduct caused "serious harm to public confidence in the bar and to the integrity of the civil justice system."

Regarding the existence of aggravating factors, the trial court found that the plaintiff had been disciplined several times prior to these proceedings,[51] had acted out

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[51] The trial court listed the following prior disciplinary actions as of the time the trial court disbarred the plaintiff: "(1) *Michael* v. *Burton*, Superior Court, judicial district of Danbury, Docket No. CV88 295948 (1989), (*Mottolese, J.*) Reprimand. Unfounded, outrageous allegations of misconduct by Judge Howard Moraghan and other court personnel. . . . (2) *Voog* v. *Burton*, Docket No. CV90 0113 (1991), Reprimand. Violation of rule 3.4(1), (3) and (6) of the Rules of Professional Conduct. (3) *Fairfield Grievance Panel* v. *Burton*, CV96 0024 (1997) Reprimand. Violation of rules 8.2 (a) and 8.4 (4). This reprimand was affirmed by Judge McWeeny. *Burton* v. *Statewide Griev. Comm.*, 1998 Conn. Super. LEXIS 2729, (1998), reversed on procedural grounds in *Burton* v. *Statewide Grievance Committee*, 60 Conn. App. 698, 760 A.2d 1027 (2000). The complaint is currently being reheard by the statewide grievance committee. (4) *Moraghan* v. *Burton*, Docket No. CV97-0338 (2000), Reprimand. Violation of rule 8.2 (a), appeal to the Superior Court pending. (5) *Fairfield Judicial District Grievance Panel* v. *Burton*, Docket No. CV98-0368, Reprimand. Violation of rule 3.1, appeal to Superior Court pending. (6) *Bartel* v. *Renard*, United States District Court for the Southern District of New York, Docket No. 96 CIV-6463 (JSM) (S.D.N.Y. October 27, 1999), Order of Honorable John S. Martin, Jr., Joint and several award of attorney's fees of $41,335.03 for obstruction of court order and wilful-wanton misconduct. (7) *Bartel* v. *Renard*, United States District Court, Docket No. 96 CV 6463 (JSM)

of selfish and dishonest motives,[52] had engaged in a pattern of misconduct,[53] had committed multiple offenses,[54] had engaged in a bad faith attempt to obstruct the disciplinary proceedings by filing a federal action against the trial court,[55] had submitted false statements to the

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(S.D.N.Y. December 16, 1999), Order of Honorable John S. Martin, Jr., Contempt of court order joint and several award of $5050. (8) *Monsky* v. *Moraghan*, 2000 U.S. App. LEXIS 12481 (2000), Summary order. Show cause order for sanctions of $5000 and double costs for blatantly frivolous appeal. (9) *Burton* v. *Moraghan*, Docket No. CV No. 3:98 CV 1490 (AHN) September 6, 2000. United States Magistrate Judge Holly B. Fitzsimmons, award of attorney's fees and expenses $5200 for violation of court order; confirmed by the court, Nevas, J."

We also note that, subsequent to the trial court's action in the present case, the plaintiff has been sanctioned in other cases. See *In re Egri*, 68 Fed. App. 249 (2003) (affirming District Court's sanction of $171,546.80 for violating permanent injunction); *Burton* v. *Statewide Grievance Committee*, 48 Conn. Sup. 94, 103, 830 A.2d 1205 (2002) (reprimand for bringing "charges against judges with reckless abandon, thereby undermining public confidence in the administration of justice"), aff'd, 79 Conn. App. 364, 365, 829 A.2d 927 (2003).

[52] For support for this factor, the trial court pointed to the evidence supporting its conclusion that the plaintiff had engaged in a conflict of interest, engaged in inappropriate conduct toward the court and made misrepresentations to the court.

[53] For support for this factor, the trial court stated: "[The plaintiff's] continued course of conduct as evidenced by (1) her considerable record of prior disciplinary sanctions, (2) the unprofessional practices described in [the memorandum of decision finding that the plaintiff had engaged in misconduct], [and] (3) . . . her complete refusal to recognize the wrongfulness of her conduct establishes a clear and resolute pattern of misconduct."

[54] See footnote 51 of this opinion.

[55] The trial court noted that immediately prior to the distribution of its memorandum of decision, it was served with a "Motion for Stay and/or Disqualification," which made reference to an action for

court during disciplinary proceedings,[56] had refused to acknowledge the wrongful nature of her conduct,[57] had engaged in misconduct against the civil justice system, which is vulnerable to unsubstantiated attacks by attorneys,[58] had acquired extensive experience in the field of litigation[59] and was indifferent to making

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declaratory and injunctive relief filed in the United States District Court for the District of Connecticut by the plaintiff against the trial court. The complaint, as explained by the trial court, alleged that the trial court suffered from a " 'constitutional infirmity' " prohibiting it from participating in the proceedings because of a " 'previously repeatedly manifested actual bias and hostility' " against the plaintiff. The trial court deemed the federal court action "a transparent attempt to obstruct and intimidate the court from carrying out its final responsibility to impose appropriate sanctions."

[56] This factor, according to the trial court, was supported by the plaintiff's baseless claims of gender bias and the plaintiff's numerous evasive and equivocal answers, given in the investigatory and sanction phases of the proceeding, which were intended to mislead the court.

[57] For support for this factor, the trial court explained that the plaintiff has "lashed out" against each participant in the proceeding and had accused several parties of misconduct, including her accusation that the statewide grievance committee had engaged in a " 'serious pattern of abuse for many years against her.' "

[58] Regarding this factor, the trial court noted that although there were no traits of vulnerability among the plaintiffs, "the civil justice system is the real victim here." Additionally, the trial court noted that "the judges who make the system work are especially vulnerable to this type of conduct because they have limited, if any, ability to protect themselves from unsubstantiated attacks. The system suffers immeasurable harm when its constituent members are treated with open and aggressive disdain by an attorney who practices within it."

[59] For support for this factor, the trial court noted that the plaintiff was admitted to the New York bar in 1977 and to the Connecticut bar in 1985.

restitution.[60] With respect to the existence of mitigating factors, the trial court found, among other things, that the plaintiff maintains a good reputation as an attorney in the community and had two disciplinary actions that were remote in time to the offenses constituting misconduct in the present case.

In the present case, the trial court concluded that the plaintiff had engaged in the unauthorized representation of clients and in conduct that resulted in a conflict of interest, that she had made several misrepresentations of material fact, that she had engaged in inappropriate conduct toward the court and that she had demonstrated a lack of competence to practice law. The trial court also determined that during the course of her conduct, the plaintiff had violated several Rules of Professional Conduct including rules 1.1, 1.4, 1.7, 1.8(f), 3.3(a)(1), 8.2 and 8.4(3) and (4). Additionally, the trial court found the existence of several aggravating factors and only two mitigating factors. Although, without question, the sanction of disbarment is the most serious penalty an attorney can endure, in these circumstances we do not believe that it was unreasonable for the trial court to have disbarred the plaintiff. We conclude, therefore, that the trial court did not abuse its discretion when it ordered that the plaintiff be disbarred from the practice of law.

The writ of error is dismissed.

In this opinion the other justices concurred.

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[60] Regarding this factor, the trial court noted that because the plaintiff believed she had not engaged in any misconduct, she would be unwilling to carry out any restitution that the court could order.

(2)

No. 03-1408

Supreme Court, U.S.
FILED
APR 29 2004
OFFICE OF THE CLERK

In The

Supreme Court Of The United States

NANCY BURTON,

Petitioner,

v.

HONORABLE A. WILLIAM MOTTOLESE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Connecticut Supreme Court properly concluded that the Connecticut Superior Court did not violate the Petitioner's right to procedural due process when it exercised its inherent authority to initiate attorney disciplinary proceedings on its own motion and, following notice and a six-day adjudicatory proceeding, disbarred the Petitioner from the practice of law in Connecticut?

2. Whether the Connecticut Supreme Court properly affirmed the Connecticut Superior Court's disbarment of the Petitioner, having found no basis for concluding that the Superior Court abused its discretion or that the proceedings were unfair?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iv
COUNTERSTATEMENT OF THE CASE.....	1
A. Facts Based On The Record.....	2
B. The Petitioner's Misstatements.....	7
REASONS FOR DENYING THE WRIT.....	12
I. THE CONNECTICUT SUPREME COURT'S CONCLUSION THAT THE TRIAL COURT HAD INHERENT AUTHORITY TO INITIATE A DISCIPLINARY PROCEEDING IS AN ISSUE OF STATE LAW THAT IS NOT PROPERLY SUBJECT TO THIS COURT'S REVIEW.....	12
II. THE TRIAL COURT'S DISCIPLINARY PROCEEDINGS WERE FAIR AND DID NOT VIOLATE DUE PROCESS.....	18
A. There Was Ample Evidence Of Bad Faith.....	18

B. The Interpretation Of Rule 1.5 Is A Matter Of State Law That Is Not Properly Subject To Review..... 20

C. Ms. Burton's Claim That The Trial Court Was Biased Was Fully Reviewed And Properly Rejected By The Connecticut Supreme Court..... 21

D. The Connecticut Supreme Court's Mention Of Ms. Burton's Subsequent Discipline Did Not Violate Due Process..... 21

E. Disbarment Was Warranted..... 24

CONCLUSION..... 25

TABLE OF AUTHORITIES

Cases	Page
Baldwin Hardware Corp. v. Franksu Enterprise Corp., 78 F.3d 550 (Fed. Cir. 1996).....	19
Burton v. Mottolese, 267 Conn. 1, 835 A.2d 998 (2003)(*en banc*).....	1,7,14,15
Burton v. Statewide Grievance Committee, 48 Conn. Supp. 94, 830 A.2d 1205 (2002), *aff'd*, 79 Conn. App. 364, 829 A.2d 927, *cert. denied*, 267 Conn. 903, 838 A.2d 209 (2003).....	22
Bush v. Gore, 531 U.S. 98 (2000).....	13,17,18
Doe v. Statewide Grievance Committee, 240 Conn. 671, 694 A.2d 1218 (1997).....	15
Egri v. Connecticut Yankee Atomic Power Co., No. 3:02cv400(AHN) (D. Conn. July 8 and July 24, 2002), *aff'd*, *In re Egri*, 2003 U.S. App. Lexis 13409 (2d Cir. July 1, 2003), *cert. denied*, *Burton v. Connecticut Yankee Atomic Power Co.*, __ U.S. __, 124 S. Ct. 1419 (Feb. 23, 2004).....	22
Ex Parte Wall, 107 U.S. 265 (1882).....	17

Grievance Committee v. Goldfarb,
9 Conn. App. 464, 519 A.2d 624,
cert. denied, 203 Conn. 802,
522 A.2d 292 (1987)..... 16

Heath v. Alabama, 474 U.S. 82 (1985)..... 20

In re Flanagan, 240 Conn. 157,
690 A.2d 865, *cert. denied*,
522 U.S. 865 (1997)..... 9

In re Peck, 88 Conn. 447,
91 A. 274 (1914)..... 15,16

In re Sealed Appellant, 194 F.3d 666
(5th Cir. 1999)..... 18,19

In re Snyder, 472 U.S. 634 (1985)..... 16

International Longshoreman's Assn.,
AFL-CIO v. Davis,
476 U.S. 380 (1986)..... 13,17

Kersey's Case, 842 A.2d 121 (N.H. 2004)..... 17

Lander v. Hartford Life and Annuity
Insurance Co., 251 F.3d 101
(2d Cir. 2001)..... 17

Massameno v. Statewide Grievance
Committee, 234 Conn. 539,
663 A.2d 317 (1995)..... 14

Mullaney v. Wilbur, 421 U.S. 684 (1975)..... 17,20

People of the Territory of Guam v. Palomo, 35 F.3d 368 (9th Cir. 1994), *cert. denied*, 513 U.S. 1089 (1995)..... 17

Schad v. Arizona, 501 U.S. 624 (1991)..... 17,20

Sullivan v. Monroe, 2001 Conn. Super. Lexis 2000 (Conn. Superior Ct., July 17, 2001)..... 6,8,9

Sullivan v. Monroe, No. CV 000370545, 2001 Conn. Super. Lexis 3141 (Conn. Superior Ct., Nov. 2, 2001)..... 1,7,19,25

Thalheim v. Greenwich, 256 Conn. 628, 775 A.2d 947 (2001)..... 24

Other Authorities

Connecticut Practice Book § 2-45..... 16

Connecticut Practice Book § 2-47..... 12,13,14,17

Rule 15.2 of the Rules of the Supreme Court..... 2

Rule 1.1 of Professional Conduct..... 6

Rule 1.2(a) of Professional Conduct..... 6

Rule 1.2(c) of Professional Conduct..... 6

Rue 1.4 of Professional Conduct..... 6

Rule 1.5(b) of Professional Conduct..... 6,8

Rule 1.7(b)(2) of Professional Conduct..... 6

Rule 1.8(f) of Professional Conduct..... 6

Rule 1.16(a)(3)..... 6

Rule 3.3(a)(1)..... 6

Rule 3.5(3)..... 6

Rule 8.2..... 6,22

Rule 8.4(3)..... 6

Rule 8.4(4)..... 6

COUNTER-STATEMENT OF THE CASE

This petition arises from a decision of the Connecticut Supreme Court, *Burton v. Mottolese*, 267 Conn. 1, 835 A.2d 998 (2003)(*en banc*), affirming the decision of Connecticut Superior Court Judge A. William Mottose to disbar the Petitioner, Attorney Nancy Burton, from the practice of law in Connecticut. *Sullivan v. Monroe*, No. CV 000370545, 2001 Conn. Super. Lexis 3141 (Conn. Superior Ct., Nov. 2, 2001).

Ms. Burton has a long history of attacking the integrity and impartiality of the Connecticut judiciary, ignoring established rules of civil procedure, flouting court orders, and engaging in other egregious acts of professional misconduct for which she has been reprimanded and sanctioned by the Connecticut state and federal courts at least ten times. *See Burton*, 267 Conn. at 56 n. 51; Petitioner's Appendix, hereinafter "Pet. App.," at 62a n. 51.

In the present case, after Ms. Burton brought suit without the authorization of the named plaintiffs, misrepresented facts to the court, ignored conflicts of interest, leveled unwarranted and disrespectful attacks upon the court, and otherwise performed at a level below the acceptable level of competence for an attorney, the presiding judge, the Honorable A. William Mottolese, conducted an investigation, notified Ms. Burton of the charges, held a six-day disciplinary hearing, and ordered Ms. Burton disbarred.

The Connecticut Supreme Court, sitting en banc, meticulously reviewed the record below and unanimously affirmed the trial court's order. In so doing, the Court expressly rejected almost all of the arguments that Ms. Burton makes in this petition, including the argument that the trial court's proceedings violated due process. Because Ms. Burton's "Statement of the Case" to this Court is riddled with misstatements, omissions and "facts" for which there is no support in the record, the respondent, the Honorable A. William Mottolese, submits this counterstatement of the facts pursuant to Rule 15.2 of the Supreme Court Rules in order to clarify the events that led to the trial court's order of disbarment.

A. The Facts Based On The Record

The trial court's inquiry into Ms. Burton's professional misconduct arose during Ms. Burton's purported representation of twenty-two plaintiffs in *Sullivan v. Monroe*, No. CV 000370545 (Conn. Superior Ct., Judicial District of Fairfield at Bridgeport, Connecticut), over which the respondent, the Honorable A. William Mottolese was presiding.

Ms. Burton was hired in 1999 by Lenore and Joseph Sullivan to appeal a decision of a local zoning board to allow the use of a rock crusher during construction of a new subdivision. At a neighborhood meeting on December 22, 1999, the Sullivans invited those in attendance to listen to a presentation by Ms. Burton and put their names on a sign-up sheet if they wanted to become co-plaintiffs with the Sullivans in the appeal. (Pet. App. at 2a-3a).

Approximately one week later, without meeting with the plaintiffs individually to discuss their objectives and potential conflicts of interest, entering into written agreements concerning the scope of the representation and the potential costs of the litigation, or adequately explaining to the individuals that they were going to be plaintiffs in a lawsuit, Ms. Burton filed not only the zoning appeal, but also a declaratory judgment action listing the Sullivans and the twenty individuals who had "signed-up" as the plaintiffs. (Pet. App. at 3a, 42a-47a).

On July 18, 2000, after the trial court had dismissed two counts of the declaratory judgment action, Lenore and Joseph Sullivan notified Ms. Burton in forceful and unambiguous terms, by telephone, letter, fax and e-mail, that they did not want to appeal or move to reargue the court's decision and did not want Ms. Burton to file any further pleadings in the case. (Pet. App. at 3a-4a). The Sullivans also sent a copy of their letter to the court. Notwithstanding the Sullivan's emphatic language, Ms. Burton defied her clients express instructions by filing a motion to reargue on July 20, 2000. (Pet. App. at 4a).

Ms. Burton's conduct angered not only the Sullivans, but also opposing counsel. In response to defense counsel's multiple motions for sanctions, the court scheduled a hearing for September 28, 2000. (Pet. App. at 4a-5a). At the hearing, which Ms. Burton failed to attend, it was brought to the court's attention that at least one plaintiff, Katherine Finch, had not authorized Ms. Burton to use her name in the lawsuit as a plaintiff and had hired

counsel to withdraw her from the litigation. (Pet. App. at 5a). Although Ms. Burton claims that the trial court conducted proceedings ex parte, in fact, the trial court rescheduled the hearing for October 31, 2000, and issued a written order instructing the parties that it would consider, among other matters, all motions for sanctions, including allegations involving Katherine Finch, and the Sullivan's complaint to the court concerning Ms. Burton's conduct. (Pet. App. at 5a-6a).

The October 31st hearing did not address these matters, however, because Ms. Burton opened the hearing by moving to disqualify Judge Mottolese from the case and accused him of gender bias. (Pet. App. 6a). After hearing argument, the court denied the motion to disqualify and ordered a further hearing to address the defendants' motions for sanctions against Ms. Burton. In an order dated November 9, 2000, the trial court notified the parties that "if necessary, the court will adjudicate the status of each plaintiff to ascertain if they are properly plaintiffs in the case on December 12, 2000." (Pet. App. at 6a).

When the parties reconvened on November 29, 2000, the court noted that although the defendants had moved for summary judgment, a number of the plaintiffs had withdrawn from the case and the lead plaintiffs, the Sullivans, had stated their desire to end the litigation. Accordingly, the court asked Ms. Burton to canvass the plaintiffs to determine whether they wanted to oppose the motion for summary judgment. In addition, the court identified two issues that it felt that it had an obligation to

address: (1) "whether Ms. Burton continued to participate in the litigation by filing pleadings and taking action without the consent of her clients;" and (2) whether Ms. Burton's allegations of gender bias against the court, which she had renewed in a second motion to disqualify and which, in the court's view, seriously undermined public confidence in the institution of the court, should be the subject of disciplinary action against Ms. Burton. (Pet. App. at 7a).

On December 12, 2000, after learning that Ms. Burton had failed to canvas the plaintiffs, the court began hearing the testimony of nine plaintiffs who were questioned under oath by the court and cross-examined by Ms. Burton concerning their understanding of the lawsuit and whether they wanted to continue to participate in it. Almost all of the plaintiffs who testified indicated that they did not understand that they had authorized Ms. Burton to bring an action in their names. (Pet. App. at 8a).

At the end of the plaintiffs' testimony, on December 22, 2000, the trial court announced that Ms. Burton's conduct had been "seriously called into question by the evidence" in three major areas: (1) her "authority, or lack of authority to represent the numerous plaintiffs other than the two Sullivans;" (2) her "continued activity in the case after being directed by the Sullivans to take no further action;" and (3) "the issue of [her] apparent divided loyalty between [her] duty to [her] client and [her] own self-protection or aggrandizement." (Pet. App. at 11a-12a). After explaining these charges and informing Ms. Burton

that she was free to testify on her own behalf either with or without counsel, the court scheduled a disciplinary hearing that began on January 4, 2001, and continued for six days. (Pet. App. at 12a).

At the end of the hearing, the trial court outlined the specific Rules of Professional Conduct that it felt were implicated by Ms. Burton's conduct, invited the parties to file briefs, and ultimately issued a detailed 34-page decision on July 17, 2001. It its decision, the court concluded that Ms. Burton had violated Rules 1.1, 1.2(a), 1.2(c), 1.4, 1.5(b), 1.7(b)(2), 1.8(f), 1.16(a)(3), 3.3(a)(1), 3.5(3), 8.2, 8.4(3) and 8.4(4) of the Rules of Professional Conduct by (1) purporting to represent clients without their consent; (2) ignoring conflicts of interest; (3) making misrepresentations to the court; (4) leveling unwarranted and disrespectful attacks upon the court; and (5) engaging in conduct that fell below the acceptable standard of competence for an attorney. (Pet. App. at 12a). *Sullivan v. Monroe*, 2001 Conn. Super. Lexis 2000 (Conn. Superior Ct., July 17, 2001).

On August 14, 2001, the court held a separate hearing on the issue of sanctions and weighed the aggravating and mitigating circumstances as required by the ABA Standards for Imposing Lawyer Sanctions, including the fact that Ms. Burton had a history of misconduct. Concluding that "[t]he evidence . . . reveals a patter of pervasive misconduct in so many facets of the practice of law that Attorney Burton's very fitness to practice law has been called into question," the court issued

a ruling on November 2, 2001, in which it ordered Ms. Burton disbarred. *Sullivan v. Monroe*, No. CV 000370545, 2001 Conn. Super. Lexis 3141 (Conn. Superior Ct., Nov. 2, 2001).

Ms. Burton thereafter appealed to the Connecticut Supreme Court, which heard the case en banc and, in a unanimous 59-page opinion, affirmed the order of disbarment on December 16, 2003. *Burton v. Mottolese*, 267 Conn. 1, 835 A.2d 998 (2003). On January 7, 2004, the Connecticut Supreme Court denied Ms. Burton's motion for reconsideration and this petition ensued.

B. The Petitioner's Misstatements

Rather than simply setting forth the facts that were found by the court below, Ms. Burton has liberally embellished her Statement of the Case with allegations that are not supported by the record and were rejected by the Connecticut Superior and Supreme Courts.

First, Ms. Burton implies that she took all necessary and appropriate steps to obtain authorization from the 22 *Sullivan* plaintiffs to initiate litigation in their names. In particular, Ms. Burton claims that (1) she was hired by the lead plaintiffs in the case, Lenore and Joseph Sullivan, to initiate a zoning appeal and "institute other legal actions as appropriate" (Pet. at 4); (2) she explained to the twenty-two plaintiffs at the organizational meeting on December 22, 1999, what a "plaintiff" was and what would be required of them as plaintiffs in the litigation (Pet. at 5); and (3) no written agreements were necessary with the plaintiffs other than the Sullivans because the Sullivans were assuming all

of the costs of the litigation (Pet. App. at 6). As the trial court found and the Connecticut Supreme Court affirmed, however, (1) the December 22nd meeting was limited to the zoning appeal and did not include discussion of "other legal actions" such as the declaratory judgment action that Ms. Burton filed; (2) Ms. Burton failed to explain the nature and scope of the proceeding adequately, such that many of the plaintiffs did not understand that they were agreeing to be plaintiffs in the litigation; and (3) Rule 1.5(b) of the Rules of Professional Conduct required Ms. Burton to enter into written retainer agreements with the plaintiffs regarding the scope of her representation and to explain to them, which she failed to do, that they could still be held individually liable for taxable costs even though the Sullivans were assuming the costs of the litigation. *Sullivan*, 2001 Conn. Super. Lexis 2000 at *10-12 (Conn. Superior Ct., July 17, 2001).

Second, Ms. Burton claims that Judge Mottolese harbored a bias against her from the outset of the case. In particular, she states that Judge Mottolese (1) was scornful of her reputation as an environmental lawyer (Pet. at 7); (2) falsely accused her of filing a judicial complaint against him years earlier (Pet. at 7); (3) prejudged the issues (Pet. at 14); (4) attempted to influence the plaintiffs' testimony (Pet. 13); and (5) limited the scope of her questioning. (Pet. at 13). All of these allegations, however, were specifically reviewed by the Connecticut Supreme Court and in each case, the Court found that the actual events that occurred did not reflect any actual bias towards Ms. Burton. (Pet.

App. at 32a – 40a). Accordingly, Ms. Burton's repeated assertions that Judge Mottolese was biased are not supported by the record.

Third, Ms. Burton states that her refusal to withdraw the Sullivans from the case as they had requested was motivated by her ethical obligation to protect the Sullivans from the risk of retaliatory action by the defendants. (Pet. at 26-27). The trial court found, however, that Ms. Burton had described the Sullivans as "confused," and that Ms. Burton's true motivation was concern that if the plaintiffs withdrew, she herself would be exposed to taxable costs, fees and other expenses. *Sullivan v. Monroe*, 2001 Conn. Super. Lexis 2000 at * 6-7 (Conn. Superior Ct., July 17, 2001); *see also* Pet. App. at 49a.

Finally, Ms. Burton claims that Judge Mottolese "*refused* to disclose to [her] the nature and scope of the proceedings" until December 21, 2000. (Pet. at 11; italics in original). This assertion is both misleading and patently incorrect. It is misleading because it suggests that the trial court was required to notify Ms. Burton of the charges against her prior to the completion of its initial inquiry on December 22, 2000. In fact, no such notice was required until prior to the commencement of the adjudicatory proceedings on January 4, 2001. *See In re Flanagan*, 240 Conn. 157, 174-175, 690 A.2d 865, *cert. denied*, 522 U.S. 865 (1997); Pet. App. at 25a-26a.[1] Furthermore, although

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[1] The Connecticut Supreme Court found that the trial court fully complied with this requirement by instructing Ms. Burton, at the close of its initial inquiry on December 22, 2000, that there were

notice was not required until January 4, 2001, the Connecticut Supreme Court found that Ms. Burton was in fact given notice of the nature of the proceedings from the moment that the defendants' counsel first raised questions about Ms. Burton's authorization to represent the plaintiffs in September, 2000. (Pet. App. at 26a-27a).

In particular, on September 28, 2000, the trial court issued an order notifying the parties, including Ms. Burton, that the hearing scheduled for October 31, 2000, would address, among other matters, "all motions for sanctions" and the "letter received by the court from Lenore and [Joseph] Sullivan" claiming that they had directed Ms. Burton to stop pursuing the litigation. (Pet. App. at 26a). One of the pending motions for sanctions was a motion by opposing counsel alleging that Ms. Burton had filed suit on behalf of certain plaintiffs without their consent and was pursuing the case against the plaintiffs' wishes.

When the October 31st hearing was rescheduled, the trial court issued an order on November 9, 2000, stating that the hearing on all motions for sanctions was rescheduled for November 27, 2000, and that, "if necessary, the court will adjudicate the status of each

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three issues that would be considered in the adjudicatory proceeding. These were "first, . . . [your] authority or lack of authority to represent the numerous plaintiffs other than the two Sullivans. Secondly, your continued activity in the case after being directed by the Sullivans to take no further action in the case. And third, the issue of your apparent divided loyalty between your duty to your client and your own self protection or aggrandizement." (Pet. App. at 25a).

plaintiff to ascertain if they are properly plaintiffs in this case on December 12, 2000." (Pet. App. at 6a, 26a).

At the November 27, 2000 hearing on the motions for sanctions, the trial court informed Ms. Burton that there were two issues in the case that it felt it had an obligation to address. The first was "whether [Ms. Burton] continued to participate in the litigation by filing pleadings and taking action without the consent of her clients" and the second was Ms. Burton's assertion of gender bias against the court. (Pet. App. at 7a).

When the parties reconvened on December 12, 2000, the trial court stated in Burton's presence that he had called the hearing in order to "get on the record what the facts are, or were with regard to [the plaintiffs'] status as plaintiffs in the case." Addressing the plaintiffs who had been subpoenaed to appear, again in Ms. Burton's presence, the court stated that:

> You are here because the Court determined at one of the prior proceedings that it was vital to the administration of justice that it determine whether you (a) initially authorized Attorney Burton to include your name as plaintiffs, [and] (b) . . . if you did whether at anytime you instructed [Attorney Burton] to withdraw your name from the litigation.

(Pet. App. at 26a). Thus, Ms. Burton's assertion that Judge Mottolese had refused to disclose the nature and scope of the proceedings to her until December 21, 2000, is patently incorrect.

REASONS FOR DENYING THE WRIT

The Connecticut Supreme Court's ruling affirming Ms. Burton's disbarment does not decide an important federal question in a way that conflicts with a decision of this Court, the United States Court of Appeals, or another state court of last resort. Nor does it decide an important question of federal law that has not been, but should be, settled by this Court. On the contrary, as discussed below, the ruling is simply an interpretation and application of state law principles involving attorney discipline that are entirely consistent with the rulings of this and other courts that have recognized the court's inherent authority, on its own motion, to initiate disciplinary proceedings against an attorney. Because, contrary to the petitioner's claims, there is absolutely no compelling reason whatsoever for this Court to review this matter, the petition for writ of certiorari should be denied.

I. THE CONNECTICUT SUPREME COURT'S CONCLUSION THAT THE TRIAL COURT HAD INHERENT AUTHORITY TO INITIATE A DISCIPLINARY PROCEEDING IS AN ISSUE OF STATE LAW THAT IS NOT PROPERLY SUBJECT TO THIS COURT'S REVIEW.

Ms. Burton claims that the trial court violated her right to procedural due process by not complying with the requirements of Connecticut Practice Book § 2-47, which, according to Ms. Burton, is the sole method under

Connecticut law for disbarring attorneys.[2] Because the Connecticut Supreme Court has determined that compliance with § 2-47 is not the sole method for disbarring attorneys, and this determination is a matter of state law, it is not properly subject to review by this Court. *International Longshoreman's Assn., AFL-CIO v. Davis*, 476 U.S. 380, 387 (1986); *Bush v. Gore*, 531 U.S. 98, 112 (2000)(Rehnquist, J., concurring).

Practice Book § 2-47 provides, in pertinent part, that (1) presentment of attorneys for misconduct to the superior court shall be made by written complaint of the statewide grievance committee or a reviewing committee; (2) a hearing on the merits shall be held within 60 days; (3) the attorney shall have the right to be heard in his or her own defense and by witnesses and counsel; and (4) the court shall render judgment by dismissing the complaint or

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[2] Connecticut Practice Book § 2-47(a) states that: "Presentment of attorneys for misconduct, whether or not the misconduct occurred in the actual presence of the court, shall be made by written complaint of the statewide grievance committee or a reviewing committee. Service of the complaint shall be made as in civil actions. Any interim proceedings to the contrary notwithstanding, a hearing on the merits of the complaint shall be held within sixty days of the date the complaint was filed with the court. At such hearing, the respondent shall have the right to be heard in his or her own defense and by witnesses and counsel. After such hearing the court shall render a judgment dismissing the complaint or imposing discipline as follows: reprimand, suspension for a period of time, disbarment or such other discipline as the court deems appropriate. This may include conditions to be fulfilled by the attorney before he or she may apply for readmission or reinstatement. Unless otherwise ordered by the court, such complaints shall be prosecuted by the disciplinary counsel or an attorney appointed pursuant to Section 2-48."

imposing such discipline as it deems appropriate, including reprimand, suspension or disbarment. Because the Superior Court fully complied with the second, third and fourth of these requirements,[3] Ms. Burton must be claiming that the trial court failed to comply with the first requirement by initiating an investigation sua sponte without a written complaint from the statewide grievance committee. In essence, Ms. Burton asserts that under Connecticut law a disciplinary proceeding can only be initiated by means of a formal written complaint presented to the trial court by the Statewide Grievance Committee pursuant to the procedures set forth Connecticut Practice Book § 2-47.

Ms. Burton made the same claim to the Connecticut Supreme Court, which rejected her argument and concluded, as a matter of state law, that the trial court's disciplinary authority is not limited to considering complaints from the Statewide Grievance Committee, but also includes the inherent authority to initiate its own investigations. Specifically, the Connecticut Supreme Court held that under Connecticut law "[t]he Superior Court possesses inherent authority to regulate attorney conduct and to discipline the members of the bar." *Burton*, 267 Conn. at 25, quoting *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 553, 663 A.2d 317 (1995); Pet. App. at 28a. This means that although Connecticut's

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[3] Within 60 days after notifying Ms. Burton of the charges against her, the trial court held a six day disciplinary hearing on the merits at which Ms. Burton testified, presented evidence and was given the option of being represented by counsel.

statutes and court rules establish and authorize a Statewide Grievance Committee to act as an arm of the court in fulfilling the court's responsibility to protect the public from unfit attorneys, "[s]uch statutes . . . are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct." *Burton*, 267 Conn. at 26, quoting *Doe v. Statewide Grievance Committee*, 240 Conn. 671, 678, 694 A.2d 1218 (1997); Pet. App. at 29a.

In support of this conclusion the Court cited *In re Peck*, 88 Conn. 447, 449, 91 A. 274 (1914), in which a disbarred attorney made the same argument that Ms. Burton is making, namely that disciplinary proceedings are improper unless a complaint has been presented to the court by the grievance committee as provided for by state statute and court rule. In rejecting this claim, the Connecticut Supreme Court explained that "the statute [creating the grievance committee] did not intend to provide an exclusive mode of instituting inquiries into the conduct of attorneys." *Id.* at 456. Instead:

> The courts are, as they should be, left free to act as may in each case seen best in this matter of most important concern to them and to the administration of justice. **They may of their own initiative, and without complaint, set on foot inquiries as to professional conduct and fitness**, or they may, in their discretion, entertain a complaint received from any source within or without the profession.

Id. at 457 (emphasis added).

The Connecticut Appellate Court addressed the same issue in *Grievance Committee v. Goldfarb*, 9 Conn. App. 464, 519 A.2d 624, *cert. denied*, 203 Conn. 802, 522 A.2d 292 (1987), and concluded that because the "rules of court do not provide exclusive methods for conducting attorney discipline proceedings in the Superior Court," the trial court is not restricted to hearing only those complaints referred to it by the grievance committee. *Id.* 9 Conn. App. at 474-475.

This conclusion is further supported by Practice Book § 2-45, which states in pertinent part that "without limiting the inherent powers of the court, if attorney misconduct occurs in the actual presence of the court, the statewide grievance committee and the grievance panels shall defer to the court if the court chooses to exercise its jurisdiction."

Citing *In re Peck*, *Grievance Committee v. Goldfarb*, and Practice Book § 2-45, the Connecticut Supreme Court held, as a matter of state law, that "a complaint before the statewide grievance committee is not the exclusive method of investigating attorney misconduct" and that "the trial court properly initiated disciplinary proceedings against [Ms. Burton]" on its own motion. *Burton*, 265 Conn. at 28.

This conclusion is entirely consistent with countless rulings of this Court, the lower federal courts, and the highest courts of other states, all of which have recognized the inherent authority of the courts to discipline attorneys. *See, e.g., In re Snyder*, 472 U.S. 634, 643 (1985)("[c]ourts

have long recognized an inherent authority to suspend or disbar lawyers"); *Ex Parte Wall*, 107 U.S. 265, 272 (1882)("a court has jurisdiction without any formal complaint or petition, upon its own motion, to strike the name of an attorney from the roll in a proper case"); *People of the Territory of Guam v. Palomo*, 35 F.3d 368, 376 (9th Cir. 1994)("[i]n addition to their statutory and Rules-based powers, district courts have the inherent power to sanction attorneys); *Kersey's Case*, 842 A.2d 121, 122 (N.H. 2004).

Moreover, and most importantly, the conclusion that the trial court has such authority, and that the procedure set forth in Connecticut Practice Book § 2-47 is not the exclusive method of initiating attorney disciplinary proceedings in Connecticut, is a determination of **state law**. As this Court has repeatedly recognized, this Court has "no authority to review state determinations of purely state law." *International Longshoremen's Assn. AFL-CIO v. Davis*, 476 U.S. 380, 387 (1986); *see also Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975)("[t]his Court . . . repeatedly has held that state courts are the ultimate expositors of state law"); *Schad v. Arizona*, 501 U.S. 624, 636 (1991)("we are not free to substitute our own interpretations of state statutes for those of a State's courts"); *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, J., concurring)("[i]n most cases, comity and respect for federalism compel [the Court] to defer to the decisions of state courts on issues of state law"); *see also Lander v. Hartford Life and Annuity Insurance Co.*, 251 F.3d 101, 119 (2d Cir. 2001)("we must defer to the

Connecticut Supreme Court on issues of state law"). This "practice reflects [this Court's] understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns." *Bush v. Gore*, 531 U.S. 98, 112 (2000) (Rehnquist, J., concurring). Accordingly, review by this Court would be both inappropriate and unwarranted.

II. THE TRIAL COURT'S DISCIPLINARY PROCEEDINGS WERE FAIR AND DID NOT VIOLATE DUE PROCESS.

Ms. Burton further alleges that the court's disciplinary proceedings were fundamentally unfair because (1) there was no clear and convincing evidence of attorney bad faith; (2) ambiguities in the Rules should have been resolved in her favor; (3) the trial court was biased; (4) the Connecticut Supreme Court impermissibly considered subsequent discipline; and (5) disbarment was draconian. None of these arguments has any merit or warrants review by this Court.

A. There Was Ample Evidence Of Bad Faith

According to Ms. Burton, when a district court exercises its inherent power to disbar an attorney it must make a specific finding that the attorney's conduct constituted or was tantamount to bad faith. (Pet. at 22). Ms. Burton fails to cite any authority applying this principle to the state courts, however, and neglects to point out that a finding of bad faith may be express or implied. *In re Sealed Appellant*, 194 F.3d 666, 671 (5th Cir. 1999);

Baldwin Hardware Corp. v. Franksu Enterprise Corp., 78 F.3d 550, 562 (Fed. Cir. 1996).

In the present case, the Connecticut Supreme Court affirmed the trial court's finding that Ms. Burton made misrepresentations to the court. (Pet. App. at 55a-57a). Caselaw cited by Ms. Burton establishes that this finding alone is sufficient to imply bad faith. *In re Sealed Appellant*, 194 F.3d 666, 671 (5th Cir. 1999)(a finding that an attorney has made misrepresentations to the court implies bad faith); *see also Baldwin Hardware Corp. v. Franksu Enterprise Corp.*, 78 F.3d 550, 562 (Fed. Cir. 1996). Ms. Burton not only made misrepresentations to the court, but also engaged in unauthorized representation, ignored conflicts of interest, leveled unsubstantiated allegations against the court, and performed below the acceptable level of competence for an attorney. Taken as a whole, these findings constituted ample grounds from which bad faith could be implied.[4]

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[4] The trial court also made an express finding of bad faith when, in the course of listing the aggravating factors that warranted an increased degree of discipline, it noted that Ms. Burton had engaged in a "bad faith attempt to obstruct the [disciplinary] action" of the trial court by filing a federal lawsuit against the trial judge. *Sullivan v. Monroe*, No. CV 000370545, 2001 Conn. Super. Lexis 3141 at *13 (Conn. Superior Ct., Nov. 2, 2001); Pet. App. at 63a.

B. The Interpretation Of Rule 1.5 Is A Matter Of State Law That Is Not Properly Subject To Review.

Ms. Burton further claims that Rule 1.5(b) of the Rules of Professional Conduct, which has been adopted by the Connecticut Superior Court and requires a written agreement between attorney and client regarding the scope of the attorney's representation and the costs of litigation, is ambiguous as to whether it applies to *pro bono* clients and therefore she should not have been disbarred for failing to enter into such an agreement with each of the plaintiffs.

Contrary to her claim, however, Ms. Burton was not disbarred for failing to enter into written agreements with each her clients. She was disbarred for a multitude of reasons, only one of which was her failure to enter into such agreements. Furthermore, the specific argument that Ms. Burton is making – that Rule 1.5 does not apply to *pro bono* clients – was not raised in the court below and is therefore not properly subject to review. *Heath v. Alabama*, 474 U.S. 82, 87 (1985). Moreover, although the Connecticut Supreme Court did not address the specific issue that Ms. Burton now raises, it did conclude that Ms. Burton was bound by, and violated, Rule 1.5(b) by not entering into written agreements with her clients concerning the scope of her representation. (Pet. App. at 42a-43a). This is a determination of state law that is not properly subject to review. *Schad v. Arizona*, 501 U.S. 624, 636 (1991); *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975).

C. Ms. Burton's Claim That The Trial Court Was Biased Was Fully Reviewed And Properly Rejected By The Connecticut Supreme Court.

Ms. Burton's further claim -- that the trial court was biased – was thoroughly reviewed and rejected by the Connecticut Supreme Court. *See* Pet. App. at 32a-40a.

In particular, as noted above, the Supreme Court rejected Ms. Burton's allegations that the trial court (1) was biased against her because of her reputation as an attorney who espoused environmental protection; (2) falsely accused her of filing a complaint against the court with the judicial review council; (3) prejudged the issues before the presentation of evidence; (4) influenced the plaintiffs' testimony; and (5) unduly restricted the scope of permissible questioning. (Pet. App. at 32a). As to each of these issues, the Connecticut Supreme Court, sitting *en banc*, conducted a "thorough review of the record" and unanimously concluded that the trial court's actions, when reviewed in context, did not reflect any actual bias toward Ms. Burton or raise a reasonable question concerning the court's impartiality. (Pet. App. at 32a-40a). Because there is no reason to question the Connecticut Supreme Court's analysis, further review of this issue by this Court is unwarranted.

D. The Supreme Court's Mention Of Ms. Burton's Subsequent Discipline Did Not Violate Due Process.

Ms. Burton further objects to the fact that the Connecticut Supreme Court, in affirming her disbarment,

noted not only her numerous prior reprimands and sanctions that were cited by the trial court, but also two additional disciplinary measures that had been imposed following the trial court's order and further evidenced Ms. Burton's pattern of ethical violations. *See* Pet. App. at 62a n. 51. Contrary to Ms. Burton's claim, reference to such discipline did not violate Ms. Burton's due process rights in any way.

In the first of the two cases, *Egri v. Connecticut Yankee Atomic Power Co.*, No. 3:02cv400(AHN)(D. Conn. July 8 and July 24, 2002), *aff'd, In re Egri*, 2003 U.S. App. Lexis 13409 (2d Cir. July 1, 2003), *cert. denied, Burton v. Connecticut Yankee Atomic Power Co.*, __ U.S. __, 124 S. Ct. 1419 (Feb. 23, 2004), District Court Judge Alan Nevas imposed a $171,546.80 sanction against Ms. Burton for violating a permanent injunction. The judgment is final and, to the respondent's knowledge, Ms. Burton has not paid the sanction.

In the second case, *Burton v. Statewide Grievance Committee*, 48 Conn. Supp. 94, 103, 830 A.2d 1205 (2002), *aff'd*, 79 Conn. App. 364, 365, 829 A.2d 927, *cert. denied*, 267 Conn. 903, 838 A.2d 209 (2003), Ms. Burton was reprimanded for intentionally and recklessly making false statements in violation of Rule 8.2(a) of the Rules of Professional Conduct. This reprimand, like the sanction discussed above, is also a final judgment.

The Connecticut Supreme Court cited these two cases in a footnote in the course of listing the ten aggravating factors that the trial court had identified as

justifying a heightened degree of discipline in Ms. Burton's case. Specifically, the Supreme Court noted that the trial court had found that Ms. Burton (1) had been disciplined several times prior to these proceedings; (2) acted out of selfish and dishonest motives; (3) engaged in a pattern of misconduct; (4) committed multiple offenses; (5) engaged in a bad faith attempt to obstruct the disciplinary proceedings by filing a federal action against the trial court; (6) submitted false statements to the court during the disciplinary proceeding; (7) refused to acknowledge the wrongful nature of her misconduct; (8) engaged in misconduct against the civil justice system; (9) acquired experience in the field of litigation; and (10) was indifferent to making restitution. (Pet. App. at 62a-65a). With regard to the first aggravating factor – the fact that Ms. Burton had been disciplined previously – the trial court cited nine examples. (Pet. App. at 62a n. 51). The fact that the Connecticut Supreme Court, in listing the nine examples of prior discipline, noted, in a footnote, two more examples of misconduct that had occurred subsequent to the trial court's order in no way violated Ms. Burton's due process rights. The nine prior disciplinary actions were merely one of the ten aggravating factors in Ms. Burton's case and the Court did not suggest, and there is no basis for concluding, that the two subsequent actions were in any way determinative of its ruling. At most, the fact that the Court mentioned the new cases constituted an implied observation that the "pattern of pervasive misconduct" identified by the trial court was ongoing.

E. Disbarment Was Warranted

Ms. Burton's final claim is that disbarment was draconian. There is no question that disbarment is an extremely serious sanction. However, "[a] court disciplining an attorney does so not to punish the attorney, but rather to safeguard the administration of justice and to protect the public from the misconduct or unfitness of those who are members of the legal profession." *Thalheim v. Greenwich*, 256 Conn. 628, 655, 775 A.2d 947 (2001). Thus, "[a] court is free to determine in each case, as may seem best in light of the entire record before it, whether a sanction is appropriate and, if so, what the sanction should be." *Thalheim*, 256 Conn. at 656.

In the present case, the trial court was guided by the American Bar Association's Standards for Imposing Lawyer Sanctions and, in compliance with those Standards, appropriately considered the nature of the duty violated, the attorney's mental state, the potential or actual injury stemming from the attorney's misconduct, and the existence of aggravating or mitigating factors. Weighing all of these considerations, the trial court concluded that:

> The evidence in this case reveals a pattern of pervasive misconduct in so many facets of the practice of law that Attorney Burton's very fitness to practice law has been called into question. It is incomprehensible to the court that after twenty five years of practice Attorney Burton fails to demonstrate a proper understanding of the professional standards imposed on members of the bar. What elevates the seriousness of her

> behavior to a critical level is the fact that not only have rules of professional conduct been violated, but much of her professional misconduct has been directed toward the administration of justice. Courts cannot function if trial attorneys believe that they have the right to deny their authority when it is opportune for them to do so. Equally, the judicial institution will lose its public credibility if attorneys choose to assault the integrity of the process and the individuals who are charged with making the decisions which are essential to its vitality.

Sullivan v. Monroe, No. CV 000370545, 2001 Conn. Super. Lexis 3141 at *18-19 (Conn. Superior Ct., Nov. 2, 2001). The Connecticut Supreme Court found no abuse of discretion in this conclusion (Pet. App. at 65a) and there is no basis for this Court to conclude otherwise.

CONCLUSION

For all of the reasons set forth herein, the petitioner's petition for a writ of certiorari should be denied.

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(3)

No. 03-1408

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IN THE

Supreme Court of the United States

NANCY BURTON,

Petitioner,

—v.—

HONORABLE A. WILLIAM MOTTOLESE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

INTRODUCTION 1

REPLY TO RESPONDENT'S ASSERTION OF "PETITIONER'S MISSTATEMENTS" 2

REPLY TO RESPONDENT'S "REASONS FOR DENYING WRIT" 3

I. THE PETITION DOES NOT CHALLENGE THE TRIAL COURT'S INHERENT AUTHORITY TO *INITIATE* A DISCIPLINARY PROCEEDING 4

II. THE PETITIONER DID NOT RECEIVE CONSTITUTIONALLY SUFFICIENT NOTICE 5

III. THE PROCEEDINGS WERE FUNDAMENTALLY UNFAIR 8

IV. TO THE EXTENT THAT THE CONNECTICUT SUPREME COURT RELIED UPON PRIOR AND SUBSEQUENT DISCIPLINE, ITS DECISION VIOLATED PETITIONER'S DUE PROCESS RIGHTS 9

CONCLUSION 10

TABLE OF AUTHORITIES

Cases: PAGE

Anjone v. Town of Redding, Superior Court, Judicial District of Danbury (1986) 1

Burton v. Day, Berry & Howard, 304 CV 515 (RCN) 10

Burton v. Statewide Grievance Committee, 60 Conn. App. 698, 760 A.2d 1027 (2000).. 2

Burton v. Statewide Grievance Committee, 1998 Conn. Super. LEXIS 2729 (1998) 2

Burton v. Winans, Grievance Complaint 91-0925 1

Emslie v. State Bar of California, 520 P.2d 991 (1974) 4

Fish Unlimited v. Northeast Utilities, 1999 Conn. Super. LEXIS 1180 (1999) 1

Galindo v. State, 535 S.W.2d 923 (1976)..... 4

Grievance Committee v. Goldfarb, 9 Conn. App. 464, 519 A.2d 624 (1987) 5

In re Northeast Utilities, Docket No. 50-423-LA-3 (2001) 1

In re Peck, 88 Conn. 447, 91 A. 274 (1914) 4

In re Egri, 03-865 10

In re Egri, 03-1558..... 10

In re Ruffalo, 390 U.S. 554, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968)..... 6, 7, 8

PAGE

In re Thalheim, 853 F.2d 383 (5th Cir. 1988) 4

Keeney v. Fairfield Resources, 41 Conn. App., 120, 674 A.2d 1349 (1996) 1

Monsky v. Moraghan, 947 F.Supp. 53 (1996) 2

State v. Mourning, 247 Conn. 634, 723 A.2d 316 (2000) 1

State v. Ontra, 178 Conn. 480, 423 A.2d 134 (1979) 4

Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) 3

INTRODUCTION

The Petitioner is a public-interest attorney known in Connecticut for representing unpopular causes successfully.[1] She has never been the subject of a grievance complaint by a client. The Petitioner "maintains a good reputation as an attorney in the community."[2]

The Petitioner has mounted challenges to questionable judicial conduct, including that of the Respondent, Hon. A William Mottolese.[3] In this petition, she challenges

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[1] See, e.g., *State v. Mourning*, 247 Conn. 634, 723 A.2d 316 (1999) (" . . . it is necessary that the defendant's incarceration be terminated immediately . . .")(Petitioner representing defendant); *Fish Unlimited v. Northeast Utilities*,1999 Conn. Super. LEXIS 1180 (1999)(temporary restraining order granted, blocking the restart of the Millstone Unit 2 nuclear reactor in Waterford, Connecticut, on environmental grounds)(Petitioner representing plaintiff); *In re Northeast Utilities*, Docket No. 50-423-LA-3 (exposure by Intervenor during proceedings of the U.S. Atomic Safety and Licensing Board of the loss of two highly radioactive spent fuel rods from the Millstone Unit 1 spent fuel pool, leading to a penalty of $288,000 assessed against Northeast Utilities by the U.S. Nuclear Regulatory Commission on June 25, 2002)(Petitioner representing Intervenor); *Anjone v. Town of Redding*, Superior Court (1986) (vacating town health department orders to an elderly schoolteacher to disconnect her septic system to make way for a corporate development) (Petitioner representing schoolteacher); *Keeney v. Fairfield Resources*, 41 Conn. App. 120, 674 A.2d 1349 (1996)(affirming the right of citizen associations to intervene in environmental enforcement actions under state law)(Petitioner representing neighborhood association).

[2] Petition for Writ of *Certiorari*, App. at 65a.

[3] See, e.g., *Nancy Burton v. Christopher G. Winans*, 91-0-925 (Petitioner filed a grievance complaint in 1989 alleging that Hon. A. William Mottolese, the Respondent herein, engaged in an impermissible *ex parte* communication with opposing counsel in an environmental lawsuit. An independent grievance investigation concluded the *ex parte* communication occurred. In the proceedings below, however, the Respondent "stoutly denied" such *ex parte* session.); *Monsky v.*

Judge Mottolese's order, issued in an environmental lawsuit, disbarring her from the practice of law in Connecticut.

The Respondent's Brief in Opposition gives weight to the notion that these proceedings were initiated and prosecuted as a pretext to shut down the petitioner's public interest work and to retaliate against her judicial whistleblowing. *Venturing outside the record of these proceedings*, the Respondent states in the second paragraph of his Brief in Opposition:

> Ms. Burton **has a long history** of attacking the integrity and impartiality of the Connecticut judiciary . . . [Emphasis added.]

The quoted passage does not appear anywhere in the decision by the Connecticut Supreme Court.

REPLY TO RESPONDENT'S ASSERTION OF "PETITIONER'S MISSTATEMENTS"

The Respondent asserts that some facts in her Statement of the Case are not supported by the record. (Brief in Opposition at 7) Petitioner concedes that when she stated in her Statement of the Case that the Connecticut

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Moraghan, 947 F.Supp. 53 (1996), affirmed on other grounds, 1997 U.S. App. LEXIS 36158 (suit brought by Petitioner to enjoin state judge, Hon. Howard J. Moraghan, from taking his dog to court, where the judge permitted the unleashed golden retriever to bother women inside the courthouse and where appeals to judicial administrative personnel had proved futile); *Nancy Burton v. Statewide Grievance Committee*, 1998 Conn. Super. LEXIS 2729 (1998) (reprimand issued to Petitioner for petitioning the Connecticut Supreme Court pursuant to Connecticut General Statutes § 51-51j to investigate the conduct of three state court judges in a civil action regarding the makeup of a jury pool which included a party's spouse, the court clerk's sister-in-law, the mother of the opposing party's campaign finance secretary, and the nurse assisting the mother of an opposing attorney, among other issues. Reversed and remanded, 60 Conn. App. 698, 760 A.2d 1027 (2000).

Supreme Court affirmed disbarment by a "judge with a longstanding grudge," this was a part of her argument and was not a factual finding by the Connecticut Supreme Court. All statements asserted by the Petitioner are supported by the record in testimony by the Petitioner, plaintiff Joseph Sullivan, the affidavit of plaintiff Irving Nelson, as well as other evidence.[4]

REPLY TO RESPONDENT'S "REASONS FOR DENYING THE WRIT"

The Respondent urges this Court to deny the petition for writ of *certiorari* because the Connecticut Supreme Court decision "does not decide an important federal question in a way that conflicts with a decision of this Court, the United States Court of Appeals, or another state court of last resort." This statement is incorrect.

The Connecticut Supreme Court decision divests the petitioner of her Constitutionally protected liberty and property interests as an attorney—and her good name—without cause and without due process. Therefore, the writ presents compelling cause for review by this Court. See, e.g., *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 670, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985) (" 'Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him,' due process guarantees must be scrupulously observed. . . . When an attorney's constitutional rights have been violated, we have not hesitated in the past to reverse disciplinary sanctions that were even less severe than a public reprimand.") (Brennan, J., dissenting)

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[4] To the extent that the Respondent objects to the inclusion of facts in her Statement of the Case which appear in the record but which were not relied upon in the Connecticut Supreme Court opinion, the Petitioner did not intend to suggest otherwise and regrets any confusion which may have resulted.

I. THE PETITION DOES NOT CHALLENGE THE TRIAL COURT'S INHERENT AUTHORITY TO *INITIATE* A DISCIPLINARY PROCEEDING

The Respondent miscasts the petition as one challenging the trial court's inherent power to *initiate* attorney disciplinary proceedings. (Brief in Opposition at 12)

To the contrary, the petition expressly *acknowledges* the trial court's inherent power to *initiate* such proceedings; however, it argues that such proceedings must comply with due process and that due process in this case requires compliance with procedural protections embodied in the state rules of practice. (Petition at 18-21). See, e.g., *In re Thalheim*, 853 F.2d 383, 388 (5th Cir. 1988); *Galindo v. State*, 535 S.W.2d 923, 926 (1976); *Emslie v. State Bar of California*, 520 P.2d 991, 999 (1974).

The Respondent further mischaracterizes the petition as identifying Connecticut Practice Book § 2-47 as "the sole *method* under Connecticut law for disbarring attorneys." (Brief in Opposition at 12-13)(Emphasis added.) Section 2-47 is not a "method" for disbarring attorneys: it is a rule of procedure setting forth *minimal due process requirements* which must be accorded an attorney subject to disbarment, regardless of whether the proceedings are initiated pursuant to the court's inherent power.[5]

Without even citing § 2-47, which was first enacted in 1978, the Connecticut Supreme Court relied upon the case of *In re Peck*, 88 Conn. 447, 91 A. 274 (1914), to support the notion that a trial court may dispense with

[5] The Respondent does not dispute petitioner's assertion that all attorney disbarments in Connecticut since the Connecticut Supreme Court reversed the summary disbarment in *State v. Ontra*, 178 Conn. 480, 423 A.2d 134 (1979), have occurred pursuant to § 2-47 —with the Petitioner's case representing the sole exception.

court rules of procedure when disbarring an attorney. However, *In re Peck* does not stand for such a broad proposition; instead, it stands for the narrow proposition that a trial court may on its own initiative and without complaint "set on foot inquiries as to professional conduct and fitness"—a point readily conceded by petitioner.

The Connecticut Supreme Court further relied on the case of *Grievance Committee v. Goldfarb*, 9 Conn. App. 464, 519 A.2d 624, *cert.* denied, 203 Conn. 802, 522 A.2d 292 (1987). However, *Goldfarb* did not involve attorney discipline pursuant to the court's inherent power. *Goldfarb* involved disciplinary proceedings initiated by the Statewide Grievance Committee pursuant to its rules.

While the respondent casts this issue as one involving "pure state law" (Brief in Opposition at 17), such characterization is incorrect. The Petitioner does not ask this Court to *interpret* state law. The Petitioner seeks review of the decision of the Connecticut Supreme Court depriving the Petitioner of her federal due process rights to which she is entitled under state law.

II. THE PETITIONER DID NOT RECEIVE CONSTITUTIONALLY SUFFICIENT NOTICE

The Respondent did not inform the Petitioner that he was considering disbarring her until July 17, 2001, eight months after convening the *sua sponte* inquiry, and six months following the conclusion of the hearing. The notice of charges was set forth in the Respondent's Memorandum of Decision concluding that the Petitioner was guilty of violating various rules of professional conduct.[6] Thus, the Petitioner was not served with a written

[6] Memorandum of Decision, July 17, 2001, at 33. ("A hearing will be held on August 14, 2001 in Courtroom 3C to determine the proper sanction or sanctions to be imposed upon Attorney Nancy Burton for the violations of the Rules of Professional Conduct herein-

notice of the Respondent's charges against her until after the conclusion of the hearing and after she had been pronounced guilty.

In this case, the "absence of fair notice as to the reach of the [disciplinary] procedure and the precise nature of the charges"—as well as the potential consequences of the inquiry—deprived the Petitioner of procedural due process. *In re Ruffalo*, 390 U.S. 554, 552, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968).

Because disbarment proceedings are quasi-criminal in nature, "[t]he charge must be known before the proceedings commence." Id. at 551. As in *Ruffalo*, the Petitioner "had no notice her conduct regarding [the plaintiffs] would be considered a disbarment offense until after the conclusion of testimony." Id. at 550.

" 'Such procedural violation of due process would never pass muster in any normal civil or criminal litigation,' " Id., quoting dissenting Circuit Court Judge Edwards. Id. at 550-51.

Thus, Respondent argues incorrectly that the Petitioner was not entitled to notice of the charges against her until January 4, 2001—the date the Respondent scheduled for Petitioner's testimony.[7] *In re Ruffalo*

above found by the Court. The range of sanctions available to the court include but are not limited to those set forth in P.B. § 2-37, 2-44, G.S. § 51-84, suspension, disbarment and counsel fees."

[7] The Respondent asserts that "Ms. Burton claims that Judge Mottolese 'refused to disclose to her the nature and scope of the proceedings' until December 21, 2000" and that such assertion is "misleading and patently incorrect." Brief in Opposition at 9. First, the Respondent *misquotes* the Petitioner. The Petitioner asserted that the Respondent "*initially*" refused to disclose the nature and scope of the proceedings, referring to the Respondent's comments on December 12, 2000. Second, it is undisputed that the respondent did not inform the Petitioner that he was considering disbarring her until his Memorandum of Law dated July 17, 2001 was issued. See footnote 5 *supra*.

requires notice *prior to the hearing*, which commenced on December 12, 2000.

Moreover, *Ruffalo* requires notice of all the charges being considering by a disciplinary authority. As of January 4, 2001, the Respondent had notified the Petitioner in open court that the Respondent was considering three issues: plaintiffs' authorization, filing pleadings and "divided loyalty." In its July 21, 2001 decision, the Respondent expanded its charges to include many other issues. App. 40a-58a.

As the Respondent catalogues in his Brief in Opposition, at 3-7, the nature and scope of the proceedings continuously evolved.

The Respondent initiated disciplinary proceedings against Petitioner *sua sponte* after the opposing party filed a motion seeking "financial and other sanctions" on October 23, 2000 alleging that the Petitioner was not authorized to represent the plaintiffs in the litigation.

Initially, the Respondent issued an order notifying the parties that it would consider "all motions for sanctions" at a hearing on October 31, 2000.

That hearing was rescheduled to November 27, 2000. The Respondent stated it would "if necessary, adjudicate the status of each plaintiff to ascertain if they [sic] are properly plaintiffs on December 12, 2000."

On November 27, 2000, the Respondent stated in open court that it would address two issues: whether Petitioner "continued to participate in the litigation by filing pleadings and taking action without the consent of her clients" and Petitioner's assertion of gender bias.

On December 12, 2000, the Respondent stated in open court that he had called the hearing to "get on the record

what the facts are, or were with regard to [the plaintiffs'] status as plaintiffs in the case."

It was not until December 21, 2000—following the testimony of seven plaintiffs on December 12, 2000—that the Respondent stated that it was conducting a hearing on its *own* motion—*not the motion of opposing party* attorney—on Petitioner's "alleged unauthorized representation of numerous plaintiffs . . . [and] alleged unauthorized continuation of activity in this lawsuit on behalf of those plaintiffs . . . and what sanctions should ensue from those, if—should the Court find . . . that you have engaged in this type of conduct."

This ever-evolving process violates the principles of due process articulated by this Court in *In re Ruffalo*. Had the petitioner been served with proper notice of all the charges against her *ab initio*, as required by due process, the results would most likely be very different.

III. THE PROCEEDINGS WERE FUNDAMENTALLY UNFAIR

Before commencing its "adjudicatory" hearing on January 4, 2001 to determine whether the Petitioner was authorized to represent the 22 plaintiffs, the Respondent had already concluded that she was not. The Respondent reached his conclusion on December 12, 2000, after listening to *seven* plaintiffs, that she was not.[8]

On December 12, 2000, the Respondent stated that all should be removed as plaintiffs from the case, and he

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[8] The Respondent made numerous comments during the procedings in an apparent attempt to influence the plaintiffs' testimony in a manner prejudicial to the Petitioner, such as his comment to plaintiff Cynthia Ambrosey:

> "Your name appears . . . attached to the summons and complaint, you probably have never—I don't know, have you seen it before?" (December 12, 2000, page 79)

instructed them how to file *pro se* appearances and withdrawals. All present thereupon followed his instruction and unilaterally withdrew from the litigation.

The trial court's determination on December 12, 2000 that the Petitioner was not authorized to institute litigation on the plaintiffs' behalf preceded the testimony of three plaintiffs on December 21 and 22, 2000 to the contrary[9] as well as the Petitioner's own testimony to the contrary commencing on January 4, 2004. In addition, the record includes the letter of plaintiff Irving A. Nelson dated August 14, 2001 stating that he and his wife had fully authorized the Petitioner to represent them in the litigation and that she had their full trust.

In prejudging the issues, the Respondent deprived the Petitioner of the fair hearing required to satisfy basic due process. The Connecticut Supreme Court conclusion to the contrary was clearly contrary to the record.

IV. TO THE EXTENT THAT THE CONNECTICUT SUPREME COURT RELIED UPON PRIOR AND SUBSEQUENT DISCIPLINE, ITS DECISION VIOLATED PETITIONER'S DUE PROCESS RIGHTS

The Connecticut Supreme Court decision recites prior and subsequent discipline as supporting the Petitioner's disbarment as a "reasonable" sanction. App. at 65a. The court's reliance on such discipline deprived the Petitioner of due process.

The Petitioner was disbarred in part based on prior discipline which was subject to further appeal.[10] On

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[9] Joseph Sullivan, Lenore Sullivan and Catherine Finch.

[10] Indeed, as the Petitioner has noted to the Connecticut Supreme Court in a post-decision motion, in one of the instances cited for "prior discipline," the case of *Bartel v. Renard*, the Statewide

August 14, 2001, the Petitioner sought to reopen the proceedings to develop the record on prior discipline. The respondent rejected the request, as follows:

> THE COURT: Well, the fact that it's pending on appeal doesn't matter. . . . Ms. Burton, you'll have adequate opportunity to explain each of them to the respective tribunals before which they are pending, not this Court.

Transcript at pages 79, 82.

The Connecticut Supreme Court compounded the error when it permitted the Respondent to submit the contempt order of U.S. District Judge Alan H. Nevas, issued eight months after the trial court decision which is the subject of the present writ, as a further basis for Petitioner's disbarment.[11]

CONCLUSION

For the reasons stated, the petitioner requests that the petition be granted.

Grievance Committee initiated a complaint against the Petitioner based on a newspaper account of the case and dismissed the complaint after a hearing based on lack of evidence of attorney misconduct.

[11] Judge Nevas' contempt order, in which he imposed a $171,546 punitive sanction upon the Petitioner for instituting two lawsuits under the Connecticut Environmental Protection Act over which he lacked federal jurisdiction and for attending public hearings of and addressing letters to Haddam, Connecticut, public agencies and officials, was the subject of a petition for writ of *certiorari* to the U.S. Supreme Court, *In re Egri*, 03-865, dismissed on February 23, 2004, and is discussed in a petition for writ of *certiorari* now pending before the U.S. Supreme Court, *In re Egri*, 03-1558, as filed on May 17, 2004. The Petitioner has further challenged Judge Nevas' contempt order in a pending declaratory judgment action entitled *Nancy Burton v. Day, Berry & Howard et al.*, 304 CV 515 (RCN)(U.S. District Court, District of Connecticut).

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